United States Court of Appeals for the Second Circuit

APPENDIX

77-4028

B

P/5

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

ITT WORLD COMMUNICATIONS, INC., RCA GLOBAL COMMUNICATIONS, INC.,

Petitioners,

-against-

FEDERAL COMMUNICATIONS COMMISSION and UNITED STATES OF AMERICA,

Respondents,

-and-

GRAPHNET SYSTEMS, INC., TELENET COMMUNICATIONS CORP., WESTERN UNION INTERNATIONAL, INC., and TRT TELECOMMUNICATIONS CORP.,

Intervenors.

UNITED STATES COURT OF APPEALS
FILED
MAY 26 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX

LeBOEUF, LAMB, LEIBY & MacRAE
Attorneys for
ITT World Communications, Inc.
140 Broadway
New York, New York 10005

CAHILL GORDON & REINDEL
Attorneys for RCA Global
Communications, Inc.
80 Pine Street
New York, New York 10005

STROOCK & STROOCK & LAVAN
Attorneys for Western
Union International, Inc.
61 Broadway
New York, New York 10006

COVINGTON & BURLING
Attorneys for TRT
Telecommunications Corporation
888 Sixteenth Street, N.W.
Washington, D.C. 20006

HON. ROBERT E. BRUCE, ESQ.
GENERAL COUNSEL
FEDERAL COMMUNICATIONS COMMISSION
Attorney for The Federal
Communications Commission
1919 M Street
Washington, D.C. 20554

HON. GRIFFIN H. BELL, ESQ.
ATTORNEY GENERAL OF THE
UNITED STATES
Attorney for the United
States of America
U.S. Department of Justice
Washington, D.C. 20053

McKENNA, WILKINSON & KITTNER
Attorneys for Intervenor
Graphnet Systems, Inc.
1150 17th Street, N.W.
Washington, D.C. 20036

DONALD E. WARD, ESQ.
Attorney for Intervenor
Telenet Communications Corp.
Suite 512
1730 Rhode Island Avenue, N.W.
Washington, D.C. 20036

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

1. Graphnet Systems, Inc., 63 FCC 2d 402, FCC 77-2 (January 11, 1977). 001

2. Graphnet Systems, Inc., ____F.C.C. 2d ____, FCC Mimeo No. 80928 (April 20, 1977). 014

3. Graphnet Systems, Inc., 64 F.C.C. 2d 684, FCC 77-290 (May 10, 1977). 017

4. Graphnet Systems, Inc., ____F.C.C. 2d ____, FCC 78-181 (April 3, 1978). 020

5. Application of Graphnet Systems, February 18, 1976. 045

6. Letter to Chairman Wiley from counsel for Graphnet, February 18, 1976. 068

7. Amendment to application of Graphnet Systems, April 1, 1976. 071

8. Letter to counsel for Graphnet Systems from Chief, Common Carrier Bureau, April 30, 1976. 074

9. Application of Telenet Communications Corp., May 4, 1976. 076

10. Letter to F.C.C. from Graphnet Systems, May 26, 1976. 133

11. Petition to reject application of Telenet Communications Corp., filed by ITT World Communications, June 7, 1976. 137

12. Letter requesting rejection or dismissal of application of Telenet Communications Corp., filed by Western Union International, June 7, 1976. 148

13. Opposition to requests for rejection filed by Telenet Communications, June 15, 1976. 152

14. Comments on application of Telenet Communications filed by RCA Global Communications, June 15, 1976. 160

15. Letter to F.C.C. from Telenet Communications, June 18, 1976. 163

16. Letter to F.C.C. from counsel for Telenet Communications, July 1, 1976. 170

17. Reply to Opposition of Telenet Communications filed by ITT World Communications, July 2, 1976. 188

18. Petition to dismiss or deny application of Graphnet Systems filed by RCA Global Communications, July 2, 1976. 196

19. Letter to F.C.C. from TRT Telecommunications Corp., July 8, 1976. 203

20. Letter to F.C.C. from ITT World Communications, July 8, 1976. 205

21. Supplement to petition to dismiss or deny filed by RCA Global Communications, July 12, 1976. 207

22. Petition to deny application of Graphnet Systems filed by ITT World Communications, July 12, 1976. 212

23. Petition to deny application of Graphnet Systems filed by Western Union International, July 12, 1976. 220

24. Comments re application of Graphnet Systems filed by TRT Telecommunications, July 12, 1976. 230

25. Motion to strike reply of ITT World Communications filed by Telenet Communications, July 13, 1976. 232

26. Letter to F.C.C. from Western Union International, July 15, 1976. 238

27. Letter to interested carriers from Chief, Common Carrier Bureau re application of Telenet Communications, July 16, 1976. 241

28. Letter to F.C.C. from ITT World Communications, July 23, 1976. 243

29. Petition to deny application of Telenet Communications filed by ITT World Communications, July 23, 1976. 245

30. Petition to deny application of Telenet Communications filed by TRT Telecommunications, July 23, 1976. 251

31. Petition to deny application of Telenet Communications filed by Western Union International, July 23, 1976. 253

32. Comments on application of Telenet Communications filed by RCA Global Communications, July 23, 1976. 260

33. Opposition to petitions to deny and comments filed by Telenet Communications, August 3, 1976. 274

34. Opposition to petitions to deny filed by Graphnet Systems, August 10, 1976. 341

35. Reply to opposition of Telenet Communications filed by ITT World Communications, August 27, 1976. 364

36. Reply to opposition of Telenet Communications filed by Western Union International, August 27, 1976. 377

37. Reply to opposition of Telenet Communications filed by RCA Global Communications, August 27, 1976. 385

38. Reply to opposition of Graphnet Systems filed by by ITT World Communications, August 27, 1976. 397

39. Reply to opposition of Graphnet Systems filed by RCA Global Communications, August 27, 1976. 409

40. Reply to opposition of Graphnet Systems filed by Western Union International, August 27, 1976. 424

41. Letter to F.C.C. from Western Union International, September 24, 1976. 435

42. Letter to F.C.C. from Western Union International, October 1, 1976. 437

43. Letter to F.C.C. from Graphnet Systems requesting contigent special temporary authority, October 15, 1976. 444

44. Petition to deny application of Western Union International filed by Graphnet, October 15, 1976. 447

45. Petition to reject and deny Western Union International tariff and application filed by Telenet Communications, October 18, 1976. 464

46. Application of RCA Global Communications, Inc., October 20, 1976. 480

47. Letter to F.C.C. from Western Union International, November 2, 1976. 490

48. Letter to F.C.C. from counsel for Graphnet, November 2, 1976. 505

49. Application of Western Union International, November 9, 1976. 507

50. Letter to Western Union International from F.C.C., November 12, 1976. 515

51. Reply to Western Union International letters filed by Telenet Communications, November 12, 1976. 517

52. Letter to Chief, Common Carrier Bureau from counsel for Graphnet, November 17, 1976. 527

53. Reply to Western Union International letters filed by Graphnet, November 18, 1976. 529

54. Comments on application of RCA Global Communications filed by Communications Satellite Corporation, November 24, 1976. 548

55. Comments on application of Western Union International filed by Communications Satellite Corporation, November 24, 1976. 553

56. Comments on application of RCA Global Communications filed by AT&T, December 1, 1976. 558

57. Petition to deny Western Union International request for STA filed by AT&T, December 10, 1976. 564

58. Reply to comments of AT&T filed by RCA Global Communications, December 20, 1976. 570

59. Comments on application of Western Union International filed by Graphnet, December 22, 1976. 575

60. Petition to deny application of Western Union International filed by ADAPSO, December 22, 1976. 579

61. Comments on application of Western Union International filed by AT&T, December 22, 1976. 591

62. Response of Computer and Business Equipment Manufacturers Association, December 22, 1976. 596

63. Letter to Telenet Communications from F.C.C. December 23, 1976. 609

64. Petition to deny application of Western Union International filed by Association of Data Processing Service Organization, December 28, 1976. 611

65. Comments on application of Western Union International filed by Graphnet Systems, December 29, 1976. 623

66. Supplement to comments filed by Graphnet Systems, December 29, 1976. 627

67. Petition to deny application of Western Union International filed by Telenet Communications, December 27, 1976. 631

68. Letter to F.C.C. from Western Union International, December 28, 1976. 648

69. Letter to F.C.C. from Western Union International, December 29, 1976. 650

70. Letter to F.C.C. from counsel for Telenet Communications, December 29, 1976. 652

71. Letter to Chief, Common Carrier Bureau from counsel for Graphnet, December 29, 1976. 655

72. Reply to comments of RCA Global Communications filed by AT&T, January 3, 1977. 661

73. Letter to Chief, Common Carrier Bureau from counsel for Graphnet, January 11, 1977. 667

74. Petition for Partial Reconsideration filed by RCA Global Communications, February 10, 1977. 669

75. Request for Partial Stay filed by RCA Global Communications, March 11, 1977. 687

76. Comments on Petition for Partial Reconsideration filed by TRT, March 14, 1977. 698

77. Opposition to Petition for Partial Reconsideration filed by Telenet, March 14, 1977. 703

78. Opposition to Petition for Partial Reconsideration filed by Graphnet, March 14, 1977. 728

79. Opposition to RCA's request for Partial Stay filed by Telenet Communications, March 23, 1977. 755

80. Opposition to Request for Partial Stay filed by Graphnet Systems, March 23, 1977. 765

81. Comments filed by Western Union International, March 24, 1977. 781

82. Petition for Waiver of Rules, filed by Western Union International, March 24, 1977. 787

83. Opposition to Petition for Waiver of Rules, filed by Telenet Communications, April 1, 1977. 791

84. Motion to Strike filed by Telenet, April 1, 1977. 795

85. Reply filed by RCA Global Communications, April 1, 1977. 798

86. Reply filed by RCA Global Communications, April 4, 1977. 804

87. Opposition and Motion to Strike of Graphnet Systems, April 8, 1977. 811

88. Reply filed by Western Union International, April 13, 1977. 821

89. Opposition to Motions to Strike filed by TRT Telecommunications, April 14, 1977. 826

90. Reply to Opposition filed by Graphnet Systems, April 27, 1977. 832

91. Letter to F.C.C. from TRT Telecommunications Corp., June 28, 1976. 837

92. Letter to F.C.C. from Gillette Company, July 28, 1976. 838

93. Letter to F.C.C. from CallData Systems, August 20, 1976. 839

94. Letter to F.C.C. from American Express Company, September 9, 1976. 840

95. Letter to F.C.C. from Information Bank, November 23, 1976. 841

Common Carrier, Data Processing Service
Common Carrier, Foreign Facilities
Common Carrier, Interconnection, Connecting Arrangements
Common Carrier, Interconnection, Specialized Common Carrier

Applications for authority under Section 214 of Act to provide specialized data communication services to overseas points by domestic interconnection with foreign information transmitting networks granted. Commission will entertain any other applications to further enhance overseas data communications services.

F.C.C. 77-2

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of	
GRAPHNET SYSTEMS, INCORPORATED For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany.	File Nos. I-P-C-11 I-P-C-11A
TELENET COMMUNICATIONS CORPORATION For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	File No I-T-C-2634
RCA GLOBAL COMMUNICATIONS, INC. For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	File No. I-T-C-2657
WESTERN UNION INTERNATIONAL, INC. For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	File No. I-T-C-2658

MEMORANDUM OPINION, ORDER, AUTHORIZATION AND CERTIFICATE

(Adopted: January 4, 1977; Released: January 11, 1977)

BY THE COMMISSION: COMMISSIONER LEE ABSENT.

1. The Commission has before it the following applications seeking authority under Section 214(a) of the Communications Act, 47 U.S.C. Section 214(a):

(a) an application of Graphnet Systems, Inc. (Graphnet), filed February 18, 1976 and amended April 1, 1976, for authority to lease facilities pursuant to Communications Satellite Corporation (Comsat), F.C.C. Tariff No. 9 and to lease appropriate connecting facilities in the United States to permit its subscribers to use its facsimile services to communicate with terminal devices located in the eleven European countries captioned above;

(b) an application of Telenet Communications Corporation (Telenet), filed May 10, 1976, for authority to obtain from Comsat two interim 9600 bps satellite half-circuits and to lease appropriate connecting facilities in the United States to extend its public packet-switched data communications service from the continental United States to the United Kingdom and points beyond;

(c) an application of RCA Global Communications, Inc. (RCA), filed October 20, 1976, for authority to provide an enhanced class of Overseas Datel Service (Datel II) to be offered initially on an experimental basis for a one-year period between the United States and The Netherlands using its previously authorized overseas communications facilities; and

(d) an application of Western Union International, Inc. (WUI), filed November 9, 1976, for authority to use its previously authorized overseas communications facilities to provide Database service on an experimental basis for a one-year period between the United States and the United Kingdom.

Also before the Commission are various petitions to deny or comments concerning these applications.[1]

2. On September 28, 1976, RCA requested temporary authority pursuant to Section 63.04 of the Commission's Rules and Regulations to provide its Datel II service to the Netherlands. In a letter to RCA dated October 6, 1976, the Chief, Common Carrier Bureau granted RCA the requested temporary authority. On October 1, 1976, WUI requested temporary authority to offer its Database service. By letter of October 15, 1976, Graphnet requested temporary authority to provide service.

Description of the Proposals

3. We are here considering all of the above-captioned applications together because each applicant seeks to provide a form of enhanced data communications service between the United States and various overseas points. The proposals seek to make services available to users for whom overseas data communications have previously been technically impossible or economically inefficient. Each of the proposals involves "specialized" overseas data communications services that are

---

[1] The Telenet and Graphnet applications appeared on public notice on May 24, 1976 and June 10, 1976, respectively. Both RCA and WUI attempted to amend their tariffs to offer their proposed services pursuant to their existing authority. However, each was advised by the Chief, Common Carrier Bureau that their proposed service offerings were not encompassed by their existing authority. Consequently, RCA and WUI have filed the above-captioned applications. The applications appeared on public notice on November 11, 1976 and November 22, 1976, respectively. The pleadings which have been filed concerning each of the captioned applications are listed in Appendix A.

tailored to meet the needs of particular types of data communications users. Graphnet's proposal would permit its subscribers in the United States to input information from virtually any terminal source and, through interconnection with foreign networks, output that information on receiving facsimile terminal devices located in any one of the European countries captioned above. The Telenet, RCA and WUI proposals would serve users who require overseas access to remote databases or computing facilities. Access to the proposed Telenet overseas facilities would be provided through Telenet's existing domestic network. Telenet's system would permit access from programmable devices at speeds of 2400, 4800, 9600 bps and wideband speeds of 48000 to 56000 bps. Access from nonprogrammable devices would be offered at 0-300 bps and 1200 bps for asynchronous devices and 2400, 4800, 9600 bps and wideband for synchronous devices. Telenet would operate in a packet-mode and interface with the telecommunications facilities of the United Kingdom Post Office in accordance with the CCITT Study Group VII Recommendation X. 25. RCA's system is configured to operate on a computerized circuit-switched basis whereby the user would be afforded exclusive use of an open overseas channel in order to access remote computers or other devices. The RCA system also has the capability of operating in a packet-switched mode. Customers would access RCA's system by means of dedicated lines to RCA's operating center. RCA states that it is also intended to provide access to its proposed overseas system through appropriate interconnection with domestic networks. RCA's proposal would meet customer requirements for switched data at speeds ranging from 4800-9600 bps. RCA's proposal involves interconnection with the telecommunications facilities of ITELCOM in the Netherlands. The WUI proposal also involves computerized circuit-switching. WUI states that access to its system would be available via the public switched telephone network or directly to WUI via interconnection with the facilities of domestic entities. WUI has contracted with Tymshare, Inc., an agent for a domestic joint-user network, to make its overseas offering available to Tymshare's subscribers. The operating agreements have been assigned from Tymshare, Inc. to Tymnet, Inc.[2] Operationally, the WUI system would use network protocols similar to those used by the Tymshare network. Customer access to the WUI system would be at speeds ranging from 110 to 1200 bits per second. The overseas facility itself would operate at 4800 bits per second. WUI would interconnect with the telecommunication facilities of the United Kingdom Post Office.

Public Need

4. These proposals are in response to a fast growing need for overseas data communications services which is not presently being met by existing carrier service offerings. In our *Overseas Dataphone Decision*, Docket 19558, 57 FCC 2d 705, released January 19, 1976 we considered the need for additional overseas dataphone-type services. The data regarding international communications needs which we considered in

---

[2] Tymnet, Inc., a subsidiary of Tymshare, Inc., was recently granted authority under Section 214 by the Chief, Common Carrier Bureau, acting pursuant to delegated authority, to become a resale carrier. *Tymnet, Inc.*, released December 23, 1976. The Tymnet application stated that Tymnet would acquire the components of the Tymshare joint-user network.

that proceeding is also relevant in our determination here. In the *Overseas Dataphone Decision* we found that independent studies of the future of international communications and projections of data communications growth indicated that the number of data terminals is estimated to increase from some 600,000 in 1970 to approximately 8,000,000 by 1985. Additionally, 52,000 facsimile terminals were in use in 1972 with 290,000 terminals projected for 1980. More recent data indicates that the installed base of facsimile equipment in 1977 may be as many as 200,000 units and that this installed base will triple during the next 10 years.[3] As the number of data and/or facsimile terminals has grown there has concomitantly developed an increasing need for communications networks whereby data transmission can be efficiently accomplished between terminals or between terminals and computers or for computer to computer communications. In many instances these terminals are incompatible with one another or with the computers to which access is needed. Within the United States highly efficient data communications services are being provided by various private networks, joint-users of leased common carrier facilities and authorized common carriers including two of the applicants involved here.[4] Moreover, similar sophisticated data communications networks are in operation or under development in other nations including many of the European nations which these applicants propose to serve. As an interdependency among the peoples of the various nations has increased, there has developed a substantial need for data communications services which would interconnect data terminals and computers on a worldwide basis in an effective and efficient manner. However, the means and methods for the efficient overseas interconnection of data terminals and computers and of data communications networks are only now becoming available.

5. The services presently offered by the international record carriers do not have the inherent capability to provide data transmission services for a substantial number of potential users in a cost effective manner. The existing services usable for data transmission offered by the international record carriers are alternate voice/data or private lines, Datel service[5] and Telex service.[6] These services, are not cost-efficient for many users with intermittent data communications requirements.

6. Increasingly, business is finding a need for transaction-oriented data communications. For example, a corporation with offices located in an overseas location may wish to access its computer located at its headquarters in the United States in order to place into the computer

---

[3] *Communications News*, December 1976, at 13.

[4] Specifically, Graphnet pursuant to its initial authorization, 44 FCC 2d 800 (1974), and supplementary authorizations, offers a store-and-forward network to interconnect facsimile machines and to transmit from computers, telegraph machines and data terminals to facsimile machines. Graphnet has also been authorized to offer its store-and-forward system for communications between digital terminals, FCC 76-1004, released November 11, 1976. Telenet is authorized to provide a packet-switched data communications service which interconnects customers' computers or computer terminals. See 46 FCC 2d 680 (1974).

[5] Datel is a switched message and facsimile record service which uses voice transmission only for cuing and which is capable of interconnection with domestic services of The American Telephone and Telegraph Company and The Western Union Telegraph Company. Pursuant to applicable tariffs filed with the Commission, a customer is manually connected to an overseas line which is dedicated to the customers' use for the duration of the call. Charging is on a time-sensitive basis.

[6] Since computers can be connected to the Telex network, telex terminals can be used for computer access.

or retrieve from the computer very short streams of information at various times during the day. Further, computers in the United States and the various nations of the world contain large storehouses of information which would from time-to-time be of use to businesses or institutions located in another nation. It is desirable that potential users in the United States have access to important databases located in other nations and, likewise, that the data processing resources in this country be made available to potential users located in other nations.

7. In many instances it is not feasible for a data communications user desiring access to an overseas terminal or computer to use the existing services of the international record carriers. Since data communications tend to be intermittent and last for very short periods of time only very high volume users will find it cost efficient to interconnect overseas locations using alternate/voice data circuits. The use of Datel or Telex is also inefficient for many data communications users since each time a terminal or computer is accessed a separate call must be placed over the Datel or Telex network. This defeats the advantages inherent in high speed transaction-oriented data processing which potential users of data communications services seek. Moreover, the existing overseas data communications services generally do not in themselves make possible communications between incompatible terminals or computers. In view of the technical and economic deficiencies of existing services relative to the public need, we find that the public interest requires more and better service. It remains to be determined how this service can best be provided.

8. Each of the applicants propose services which are designed to meet the essential communications requirements described above. Graphnet would extend its existing network so that using its store-and-forward techniques subscribers located in the United States would be permitted access on a dial-up basis to facsimile devices at addressee locations in other nations whether or not the facsimile devices are compatible with the subscriber's input device. Using packet-switching techniques, Telenet would achieve highly efficient use of its overseas circuits by intermixing individual customers' data on the circuit in packet form. The efficient use of the overseas circuit would permit small volume intermittent users access to overseas terminals or computers in a cost-efficient manner for real-time or conversational interaction between terminals. The Telenet network would perform speed and code conversion so that data communication between normally incompatible terminal devices or computers would be possible. WUI would use statistical multiplexing techniques which would create economies of scale so that real-time or conversational interaction between terminals and computers could be accomplished in a more cost-effective manner for many users than WUI's present service offerings permit. RCA would use statistical multiplexing and dynamic bandwidth allocation techniques to obtain improved utilization of the international bearer channels in order to enable the provision of a cost-effective high-speed switched data service.

9. We find that there is an existing need for the kind of new and innovative overseas data communications services discussed above and that authorization of the instant applications would benefit the public. We also find Graphnet, Telenet, RCA and WUI to be legally, technically and otherwise qualified to offer their proposed services. In the

historically competitive environment of the international communications market, RCA and WUI have considerable experience in the offering of their existing record services and the grant of their applications would permit these carriers to expand their service offerings in response to the public need. Both Graphnet and Telenet are authorized common carriers with proven capability and expertise in the provision of sophisticated domestic data communications services. The authorization of Graphnet and Telenet would extend the benefits of their capability and expertise into the competitive international environment and make available to the public the benefits inherent in their respective service offerings.

10. In the large market for the provision of overseas communications services between data terminals there may be the potential for several other varieties of service offerings. These other service offerings may involve different transmission techniques tailored to meet the communications needs of an increasing number of customers. Advancing computer technology can be expected to create new usages for overseas data communications services and new transmission techniques. In the exercise of our statutory mandate to "make available so far as possible, to all the people of the United States a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges," 47 USC Section 151, and the requirement that we keep informed ". . . as to the technical developments and improvements in wire and radio communication . . . to the end that the benefits of new inventions and developments may be made available to the people of the United States," 47 USC Section 218, we will study this developing field in the context of the services provided by the four applicants. Moreover, we will not preclude our consideration of other applications which would meet the growing demand for data communications services. However, we are not herein making a general finding that would require the grant of any application proposing a new service or new transmission technique.

11. Our decision to grant the instant applications and to allow the entry of these four qualified applicants into the developing field of overseas data communications will make available to the public a variety of service offerings. Through continuing supervision and evaluation of the service offerings, we can more fully ascertain the exact contours of the public benefit in the provision of these services, and, where appropriate, delineate future policy concerning these overseas data communications services. Moreover, our ongoing evaluation will provide a factual basis for the consideration of future applications. Therefore, these and other authorizations for new and innovative overseas data communications services shall be subject to specific reporting requirements so that the Commission can evaluate information gained from actual operating experience and keep itself informed as to the exact dimensions of the public need and how it can best be fulfilled.

12. In authorizing Graphnet and Telenet to offer their proposed services and in stating that we will consider other applications for new and innovative overseas data communications services we are not authorizing additional competition based on a belief that competition in and of itself is in the public interest. Rather, we believe that this procedure will afford an opportunity to the applicants to demonstrate

the public advantages in the use of their respective technologies and serve the public interest by providing the most informative input for further evaluation as to how the public interest can best be met. *Network Project* v. *F.C.C.*, 511 F.2d 786 (D.C., 1975). *United Telegraph Workers* v. *F.C.C.*, 436 F.2d 920 (D.C., 1975).

13. Certain of these applications raise collateral issues which we must address. First, we note that Graphnet and Telenet have not provided evidence of formal or informal agreements with foreign correspondents to complete their proposed service offerings. The terms of such agreements are often useful in determining whether the proposal as a whole is in the public interest, and thus are normally required of all applicants. In the present situation, however, enforcement of this requirement might well disserve the public interest. Since both Graphnet and Telenet are new prospective entrants into the international communications market, strict enforcement of such requirements might simply encourage foreign correspondents not to consider appropriate agreements for the overseas termination of Graphnet and Telenet services. We believe that in these circumstances our regulatory needs can be adequately satisfied by conditioning the authorizations to require the execution and filing of satisfactory agreements prior to initiation of these services, rather than prior to their authorization.

14. Various other objections have been raised with respect to the above-captioned applications. RCA asserts that Graphnet and Telenet may obtain a competitive advantage over existing international record carriers which are restricted in their authorizations from providing domestic record service and from originating and terminating traffic beyond a limited number of gateways. RCA believes that Graphnet and Telenet should be required to form separate corporations for their domestic and overseas operations so that the domestic and overseas entities may operate at arm's length. We see no need to require Graphnet and Telenet to operate in this fashion at this time. Although we have previously required RCA to establish separate corporations for domestic and international operations we did so in order to ensure, on the one hand, that its domestic competitive offerings would not be subsidized by its overseas public message service offerings, and, on the other hand, to ensure that any losses which might accrue to its domestic competitive operations would not affect the viability of the overseas offerings. *RCA Global Communications, Inc.*, 56 FCC 2d 660, released November 6, 1975. In the case at hand we can see little public benefit in requiring Graphnet and Telenet to establish separate corporations. Each is a small entity involved only in specialized competitive services and each would have no significant revenue base in one market by which it might obtain an advantage over existing or new entities in the other market. We shall require, however, that Graphnet and Telenet keep accurate accounts of both domestic and international traffic and revenues so that the Commission has appropriate data which it can use to determine whether the suggested corporate arrangements would better serve the public interest.

15. RCA's allegations regarding competitive disadvantage apparently derive from the fact that RCA, as an international telegraph carrier, is restricted by Section 222 of the Act from domestic telegraph operations other than accepting or delivering international telegraph

messages in designated gateway cities; whereas Graphnet and Telenet, which are not international telegraph carriers as defined in Section 222, are not similarly restricted.[7] RCA has not described the precise nature or degree of the competitive disadvantage it believes will accrue to it, nor presented any probative evidence to support its allegations. Our own analysis indicates that the limitation placed upon RCA and other international telegraph carriers by Section 222 is not likely to place RCA at a competitive disadvantage in the provision of these kinds of services. The international record carriers are free to interconnect with any nonaffiliated domestic carriers including Western Union and AT&T. In the proposals before us, RCA and WUI state that access to their services will be available via AT&T's Dataphone service, Western Union's Broadband Service or via interconnection with other domestic networks, and WUI specifically includes interconnection with Tymnet as part of its service offering. Thus, even under restrictions dictated by Section 222 the international record carriers are provided sufficient flexibility to offer their services in an effective manner and on a highly competitive basis with services offered by such carriers as Graphnet and Telenet. The international record carriers also have inherent advantages over Graphnet and Telenet by reason of their established standing in the international field. Moreover, we note that any possible competitive disadvantage which might accrue to the international telegraph carriers in this situation derives not from our actions authorizing Graphnet and Telenet to extend their service offerings, but from restrictions which Congress imposed on the international telegraph carriers. We cannot refuse to authorize services which would clearly benefit the public merely because a potential competitor might arguably be restricted in the nature of his competitive response by provisions of the Act which Congress, in its judgment, has seen fit to impose on certain entities. We are, of course, presently reviewing the gateway issue in Docket 19660 to determine whether the public interest might be served by expanding the number of authorized international gateways, and intend to expedite our proceedings in that docket; but our decision herein to authorize the Graphnet and Telenet services is in no way dependent upon nor controlled by that proceeding, nor do we believe that the public benefits to be derived from these offerings should be deferred or foreclosed pending the outcome of that docket.

16. In a similar vein, ITT objects that Telenet's proposed use of its existing Boston switching center to interconnect with overseas facilities would involve the use of an unauthorized international gateway. As indicated above, the Commission is presently considering the expansion of the number of gateway cities which the international record carriers may serve in Docket 19660. Although a final decision in that docket has not yet been issued, we believe it would be an unreasonable

---

[7] Section 222(a)(3) of the Act defines an international telegraph carrier as a "common carrier by wire or radio, the major portion of whose traffic and revenues is derived from international telegraph operations". Graphnet and Telenet clearly do not fall within this definition. Section 222(a)(5), which defines domestic telegraph operations to include the domestic acceptance, transmission, reception, and delivery of record communications whether such communication is wholly domestic or simply the domestic portion of an international record communications service, includes the provision that "... nothing in this section shall prevent international telegraph carriers from accepting and delivering international telegraph messages in the cities which constitute gateways approved by the Commission as points of entrance into or exits from the continental United States ...".

burden on Telenet to require it at this time to establish a special switching center in one of the presently authorized gateway cities to provide its services pending the outcome of that proceeding. We do, however, retain jurisdiction over this matter.

17. Graphnet, Telenet, CBEMA and ADAPSO are concerned as to whether WUI's service offering will permit non-discriminatory access without regard to the particular domestic carrier or entity desiring interconnection with the WUI facilities. The petitioners question whether the operational characteristics of WUI's system would permit interconnection with entities other than the Tymnet network in an effective and efficient manner. It is stated that the terms and conditions of service as set out in the tariff are unclear and that the tariff should be more specific as to what equipment is required to interconnect with WUI, who would supply such equipment and what protocols are involved in the operation of the WUI system. A number of the petitioners have sought a further explanation of the business relationship between Tymnet and WUI and seek clarification as to whether similar terms and conditions regarding "payouts" between these two entities will be available to other parties. Additionally, some of the petitioners question whether the WUI tariff, by virtue of its prohibition against the transmission of messages, would deny access to the system by hybrid data processors who offer a lawful message switching element in their data processing services.

18. None of the petitioners question the public need for the type of service proposed by WUI. Rather, the petitioners' concerns are directed to the lawfulness of the service under Section 202(a) and 203(c). These issues are, therefore, more appropriately raised in the petitions to reject or suspend which have been filed concerning the revisions to the WUI tariff.[8] Upon analysis of the application for the proposed service and the pleadings filed in regard thereto we conclude that the questions raised concerning the terms and conditions of the proposed service do not justify withholding Section 214 authorization to provide the service. However we shall establish conditions upon this authorization and all of the other authorizations here involved in order to ensure that the public is given adequate notice of required technical and operational arrangements, that each of the carriers offer their services to domestic entities on a non-discriminatory basis, and that they provide to the Commission an explanation of and an accounting of all monetary transactions between the carrier and the domestic entity.[9]

Authorizations and Certifications

19. We conclude that each of the applicants has complied with the applicable provisions of Section 214 of the Communications Act and Section 63.01 of the Commission's Rules. We further conclude that the present or future public interest, convenience and necessity will be served by a grant of the captioned applications.

---

[8] The petition to suspend filed by CBEMA and the petitions to reject filed by CBEMA and Telenet will be addressed in subsequent orders.

[9] CBEMA and ADAPSO also express concern that the introduction of the WUI service may be a step toward the relinquishment of overseas private line service offerings in favor of the usage-sensitive "shared" services described here. The Commission recognizes the technical and economical advantages to large volume users inherent in the use of overseas private line services. Such services cannot be curtailed without appropriate authorization from the Commission pursuant to Section 214.

20. Accordingly, IT IS HEREBY CERTIFIED, That the present or future public interest, convenience and necessity will be served by the provision by Western Union International, Inc. and RCA Glocal Communications, Inc., of the services described in the above-captioned applications and by the leasing and operation of circuits by Graphnet Systems, Inc. and Telenet Communications Corporation as listed in Attachment B for the purpose of rendering the data communications services described in their respective applications.

21. IT IS ORDERED, That authority IS GRANTED to Graphnet Systems, Inc. and to Telenet Communications Corporation to lease and operate the circuits as listed in Attachment B for the purpose of rendering the data communications services described in their respective applications, and to RCA Global Communications, Inc. and to Western Union International, Inc. to use presently authorized facilities for the purpose of rendering the data communications services described in their respective applications.

22. IT IS FURTHER ORDERED, That Graphnet Systems, Inc., Telenet Communications Corporation, RCA Global Communications, Inc. and Western Union International, Inc. each shall submit to the Commission on a quarterly basis a detailed description of services rendered including the technical parameters of the service (including, but not limited to, a description of protocols), the number and type of customers served, the number and type of communications actually carried on a country-by-country basis, an accounting of all costs and revenues involved in the provision of the overseas service and, in the case of Graphnet and Telenet, an accurate accounting of all costs and revenues involved in their domestic offerings segregated from the costs and revenues involved in their overseas offerings.

23. IT IS FURTHER ORDERED, That each of the carriers authorized herein to provide their respective overseas data communications services shall offer non-discriminatory access to any other domestic entity, except where such interconnection has been specifically prohibited by previous order of the Commission, and that where interconnection with a domestic entity is involved the overseas carrier shall provide to the Commission on a quarterly basis a full accounting of all monies paid to or received from such domestic entity and a full explanation of such monetary transactions.

24. IT IS FURTHER ORDERED, That the carriers authorized herein shall provide whatever other information the Commission in its judgment may from time to time require.

25. IT IS FURTHER ORDERED, That each of the carriers shall include in its respective tariff information concerning the technical parameters of its service and the procedures to be followed by entities desiring to interconnect with the carrier.

26. IT IS FURTHER ORDERED, That the terms and conditions of service authorized herein shall not impose limitations as to the type, content, or ultimate use, by the customer or his correspondent, of the information transmitted.

27. IT IS FURTHER ORDERED, That the temporary authority (TAF-14) granted to RCA Global Communications, Inc., on October 6, 1976 IS HEREBY TERMINATED.

28. IT IS FURTHER ORDERED, That the authority granted herein to Graphnet Systems, Inc. and Telenet Communications Corporation is specifically conditioned on the Commission's approval of operating agreements with appropriate foreign entities.

29. IT IS FURTHER ORDERED, That the petition to dismiss or deny filed July 2, 1976 by RCA Global Communications, Inc. as supplemented July 12, 1976 IS DENIED.

30. IT IS FURTHER ORDERED, That the petition to deny filed July 12, 1976 by Western Union International, Inc. IS DENIED.

31. IT IS FURTHER ORDERED, That the petition to deny filed July 14, 1976 by ITT World Communications, Inc. IS DENIED.

32. IT IS FURTHER ORDERED, That the request for dismissal filed June 7, 1976 by Western Union International, Inc. IS DENIED.

33. IT IS FURTHER ORDERED, That the petition for rejection filed June 7, 1976 by ITT World Communications, Inc. IS DENIED.

34. IT IS FURTHER ORDERED, That the petition to deny filed July 23, 1976 by Western Union International, Inc. IS DENIED.

35. IT IS FURTHER ORDERED, That the petition to deny filed July 23, 1976 by TRT Telecommunications Corporation IS DENIED.

36. IT IS FURTHER ORDERED, That the petition to deny filed July 23, 1976 by ITT World Communications, Inc. IS DENIED.

37. IT IS FURTHER ORDERED, That the petition to deny filed October 15, 1976 by Graphnet Systems, Inc. IS DENIED.

38. IT IS FURTHER ORDERED, That the Petition to Deny filed December 10, 1976 by AT&T IS DISMISSED as moot.

39. IT IS FURTHER ORDERED, That, to the extent it is inconsistent with this Order, the petition to reject and deny filed October 19, 1976 and the petition to deny filed December 27, 1976 by Telenet Communications Corporation ARE DENIED.

40. IT IS FURTHER ORDERED, That, to the extent it is inconsistent with this Order, the petition to deny filed December 22, 1976 by Association of Data Processing Service Organizations IS DENIED.

41. IT IS FURTHER ORDERED, That jurisdiction is retained over all aspects of these authorizations including, but not limited to, the matters discussed above.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

ATTACHMENT A

PLEADINGS FILED

Graphnet Systems, Inc. File Nos. I-P-C-11 & I-P-C-11A

Pleading	Party	Date filed
Petition to dismiss or deny	RCA	July 2, 1976
Petition to deny	WUI	July 12, 1976
Comments	TRT	July 12, 1976
Supplement to petition to deny	RCA	July 12, 1976
Petition to deny	ITT World Communications, Inc. (ITT)	July 14, 1976
Opposition	Graphnet	Aug. 10, 1976
Reply	RCA	Aug. 27, 1976
Reply	WUI	Aug. 27, 1976
Reply	ITT	Aug. 30, 1976
Request for temporary authority	Graphnet	Oct. 15, 1976

Telenet Communications Corp.

File No. I-T-C-2634

Pleading	Party	Date Filed
Request for dismissal	WUI	June 7, 1976
Petition for rejection	ITT	June 7, 1976
Opposition	Telenet	June 15, 1976
Comments in support of ITT petition	RCA	June 15, 1976
Reply	ITT	July 18, 1976
Motion to Strike	Telenet	July 13, 1976
Petition to Deny	WUI	July 23, 1976
Petition to Deny	TRT	July 23, 1976
Comments	RCA	July 23, 1976
Petition to Deny	ITT	July 23, 1976
Opposition	Telenet	Aug. 3, 1976
Reply	WUI	Aug. 27, 1976
Reply	RCA	Aug. 27, 1976
Reply	ITT	Aug. 27, 1976

RCA Global Communications

File No. I-T-C-2657

Pleading	Party	Date Filed
Request for temporary authority	RCA	Sept. 28, 1976
Request for denial of TA	ITT	Oct. 17, 1976
Comments	COMSAT	Nov. 24, 1976
Comments	AT&T	Dec. 1, 1976
Reply	RCA	Dec. 20, 1976
Reply	AT&T	January 3, 1977

Western Union International, Inc.

File No. I-T-C-2658

Pleading	Party	Date Filed
Request for temporary authority	WUI	Oct. 1, 1976
Request for denial of TA	ITT	Oct. 7, 1976
Petition to Deny	Graphnet	Oct. 15, 1976
Petition to Reject and Deny	Telenet	Oct. 18, 1976
Letter in Opposition	WUI	Nov. 2, 1976
Reply	Graphnet	Nov. 19, 1976
Petition to Deny	AT&T	Dec. 10, 1976
Comments	AT&T	Dec. 22, 1976
Petition to Deny	Association of Data Processing Service Organizations (ADAPSO)	Dec. 22, 1976
Response	Computer and Business Equipment Manufacturers Association (CBEMA)	Dec. 22, 1976
Petition to Deny	Telenet	Dec. 27, 1976
Supplementary Comments	Graphnet	Dec. 29, 1976

ATTACHMENT B

Circuits Authorized to Graphnet Systems, Inc.

	No. of Circuits	Circuit Type
Etam-New York	6	AT&T Series 3000 voice-grade
Satellite half-circuits	6 (spade channels)	

Circuits Authorized to Telenet Communications Corporation

	No. of Circuits	Circuit Type
Andover-Boston	1	AT&T Series 3000
Etam-Washington	1	AT&T Series 3000
Satellite half-circuits	2	9600 bps

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

80928

In the Matter of the Application of

GRAPHNET SYSTEMS, INCORPORATED — File Nos. I-P-C-11
I-P-C-11A

For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany

TELENET COMMUNICATIONS CORPORATION — File No. I-T-C-2634

For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond

RCA GLOBAL COMMUNICATIONS, INC. — File No. I-T-C-2657

For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II)

WESTERN UNION INTERNATIONAL, INC. — File No. I-T-C-2658

For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service

MEMORANDUM OPINION AND ORDER

Adopted: April 15, 1977 Released: April 20, 1977

By the Chief, Common Carrier Bureau:

1. Before the Commission is a request filed March 24, 1977 by Western Union International, Inc. (WUI) for waiver of the Rules to allow WUI to file comments on a petition for partial reconsideration filed by RCA Global Communications, Inc. (RCA) of Memorandum Opinion, Order, Authorization and Certificate, FCC 77-2, released January 11, 1977. Filings concerning the RCA petition were due on March 14, 1977. 1 /

2. In support of its request WUI states that since it is in substantial agreement with the agreements advanced by RCA "it did not feel the filing of comments was necessary." 2 / WUI also states that it interpreted RCA's petition as requesting an evidentiary hearing; however, upon review of the filings of other parties it appeared to WUI that the RCA petition "contains ambiguous language which is subject to varying interpretations." 3 / WUI also states that Graphnet and Telenet requested and received extensions of time to file oppositions to the RCA petitions and that no party would be unduly prejudiced by the grant of the waiver sought herein.

3. The RCA petition was timely filed on February 10, 1977. Pursuant to Section 1.4 and 1.106 of the Commission's Rules and Regulations, filings with respect to such petition would have been due on February 23, 1977. On February 16, 1977 Graphnet and Telenet each filed timely requests for extension of time to file oppositions. These requests were granted and the date for filing was extended until March 14, 1977. The WUI request was received by the Commission ten days after expiration of the extended filing period. WUI has had ample opportunity within the established filing period to consider carefully the RCA petition and to address any issues raised therein.

4. WUI submits that it misinterpreted the RCA petition. It believed that RCA was requesting that the Commission require an evidentiary hearing concerning the authorization of Graphnet and Telenet. The specific language which WUI claims it misinterpreted requests that the Commission defer the grants of authorization to Graphnet and Telenet "pending the conduct of an appropriate inquiry into the impact that such authorizations and others, will have upon existing carriers and carrier services." No other party interpreted this language to be

---

1 / Oppositions to the WUI petition were filed by Telenet Communications Corporation (Telenet) on April 1, 1977 and Graphnet Systems, Inc. (Graphnet) on April 8, 1977. WUI filed a reply on April 13, 1977.

2 / Petition for Waiver, p. 2.

3 / Ibid, p. 2.

a request for an evidentiary hearing. Rather, as WUI itself admits, each of the other parties interpreted the petition to mean that the Commission should institute a rulemaking inquiry into overall policy regarding the authorization of international services and facilities.

5. We disagree with WUI's view that no party will be unduly prejudiced by the grant of the waiver. WUI states that it is in substantial agreement with the views expressed by RCA in its petition for partial reconsideration. These views are contrary to those expressed by the Graphnet and Telenet filings. To permit WUI to file a pleading after Telenet and Graphnet have submitted their views would afford WUI the particular advantage of, in effect, filing an opposition to the pleadings of these other parties not provided for by the rules. Good cause for this special treatment has not been shown. [4]

6. Accordingly, pursuant to Sections 0.291 and 0.303 of the Commission's Rules and Regulations, IT IS ORDERED that the petition for waiver of the rules filed March 24, 1977 by Western Union International, Inc. IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Walter Hinchman
Chief, Common Carrier Bureau

---

[4] We note that WUI did not serve Telenet with a copy of the petition at its correct address. WUI also did not serve counsel for Telenet with a copy of its petition . Section 1.47(d) of the rules requires that counsel be served with a copy of such documents. The petition is therefore also dismissable on this basis.

Common Carrier, Authorization, see also Certificate
Common Carrier, Data Processing Service
Stay Specificity Of Allegations

Petition for partial stay of Order (63 FCC 2d ——) which granted interconnection authorizations to petitioner and to other common carriers for data transmission services, denied. No showing of irreparable harm, likelihood of prevailing or public interest considerations for stay.

F.C.C. 77-290

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of GRAPHNET SYSTEMS, INCORPORATED	File Nos. I-P-C-11 I-P-C-11A
For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany	
TELENET COMMUNICATIONS CORPORATION For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond	File No. I-T-C-2634
RCA GLOBAL COMMUNICATIONS, INC. For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II)	File No. I-T-C-2657
WESTERN UNION INTERNATIONAL, INC. For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service	File No. I-T-C-2658

MEMORANDUM OPINION AND ORDER

(Adopted: April 27, 1977; Released: May 10, 1977)

BY THE COMMISSION:

1. We have before us for consideration a "Request for Partial Stay" of our Memorandum Opinion, Order, Authorization and Certificate (Decision), FCC 77-2, released January 11, 1977, filed by RCA Global

Communications, Inc. (RCA) on March 11, 1977, oppositions thereto filed by Graphnet Systems, Inc. (Graphnet) and Telenet Communications Corporation (Telenet) on March 23, 1977, and RCA's reply to the oppositions filed April 4, 1977.[1] In its petition RCA requests that the authorizations granted Graphnet and Telenet be stayed pending (a) the initiation and conclusion of an inquiry by the Commission into the effect that these authorizations and others, if implemented, will have upon existing U.S. competitors, their service offerings within the international marketplace and charges required to be paid by the public; (b) the conclusion of further Commission and court proceedings in which the grants of the subject authorizations are being challenged;[2] and (c) ultimate approval by the Commission of operating agreements these carriers may reach with overseas telecommunications administrations.

2. RCA argues that it has met the legal standards governing the grant of a stay set out in *Virginia Petroleum Jobbers Association* v. *FPC*, 259 F.2d 291 (D.C. Cir. 1958). We have previously relied upon this case in acting on requests for stay. See e.g., *Communications Satellite Corp.*, 57 FCC 2d 571 (1976). As we stated in *Resale and Shared Use*, FCC 77-159, released March 14, 1977, the pertinent criteria for an administrative agency in determining whether a request for stay should be granted are:

a. Has the petitioner shown that without a stay it will be irreparably injured?
b. Would the issuance of a stay substantially harm other parties?
c. Would the public interest be adversely affected without a stay?

3. RCA has not met its burden of demonstrating that it will suffer irreparable injury if a stay is not issued. It alleges the Commission's Order grants Graphnet and Telenet a significant competitive advantage over RCA since Graphnet and Telenet would be able to provide service to customers with both domestic and international telecommunications requirements. As a result, RCA alleges that its "standing and capabilities in the eye of U.S. data communications users" would be imperiled. RCA also alleges that to the extent Graphnet and Telenet may be able to obtain operating agreements from foreign telecommunication entities by virtue of their authorization, RCA may be foreclosed from negotiating and implementing agreements with those administrations because of an alleged predilection on the part of foreign entities to deal only with a single or a limited number of U.S. carriers for the provision of data services.

4. We do not see how RCA will be irreparably harmed in the absence of a stay. Its bare assertion that alleged competitive advantages accruing to Graphnet and Telenet will have a detrimental effect on its image among data communication users is not sufficient to justify the issuance of a stay. The degree of harm is not described. Evidence to

---

[1] In the Memorandum Opinion, Order, Authorization and Certificate we found a public need for data services proposed by RCA, Western Union International, Inc. (WUI), Graphnet, and Telenet. The authorizations of Graphnet and Telenet were specifically conditioned on the Commission's approval of operating agreements with appropriate foreign entities.

[2] An appeal of the Commission's Decision filed by ITT World Communications, Inc. is pending before the U.S. Court of Appeals for the Second Circuit. On February 10, 1977 RCA filed a "Petition for Partial Reconsideration" of our Decision.

support the claim is not provided. We concluded in our Decision that the Graphnet and Telenet proposals involve new services, different from the traditional offerings of RCA and the other international record carriers. To a great extent, these new offerings will serve classes of customers not previously served by the international record carriers. The services, in effect, will stimulate their own demand, with minimal impact on the traditional service offerings. We also concluded that RCA is not likely to be placed at a competitive disadvantage because of its position as an experienced and established international carrier. Moreover, because it is free to interconnect with nonaffiliated domestic carriers, RCA has sufficient flexibility to offer its services o a highly competitive basis with those proposed by Graphnet and Telenet. RCA has also failed to substantiate its claim that it would be foreclosed from obtaining operating agreements with foreign administrations by virtue of the Graphnet and Telenet authorizations. To the contrary, by virtue of RCA's long-standing relationships with foreign administrations, it has significant advantages over the new entrants in obtaining service agreements with the foreign administrations.

5. RCA has not demonstrated that the public interest would be adversely affected if a stay were not granted. It states that an inquiry should have been held prior to the authorization of Graphnet and Telenet, and that one of the questions this inquiry would focus on is the continuing viability of existing international carriers to furnish their services. RCA does not, however, allege that without the grant of a stay it will be unable to continue to provide its services to the public or that the public would bear increased costs, nor does it provide any evidence which would support such a position. The Commission has found that the authorization of Graphnet and Telenet to provide their respective services to certain international points will benefit the public interest. In the absence of specific showings of adverse public effect, the benefits associated with these new service offerings should not be withheld from the public.

6. Because RCA has not shown it will suffer irreparable injury and that the public interest will be adversely affected in the absence of a stay, we need not reach the question of harm to other parties if a stay were granted.

7. The issues raised by RCA Global Communications, Inc. concerning the Commission's Decision will be dealt with in our disposition of the petition for partial reconsideration. However, for the reasons stated above, sufficient grounds warranting the extraordinary relief requested here have not been shown. Accordingly RCA's Request for Partial Stay IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary.*

Before the
Federal Communications Commission
Washington, D. C. 20554

FCC 78-181
84693

In Re Applications of	
GRAPHNET SYSTEMS, INCORPORATED For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany.	File Nos. I-P-C-11 I-P-C-11A
TELENET COMMUNICATIONS CORPORATION For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	File No. I-T-C-2634
RCA GLOBAL COMMUNICATIONS, INC. For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas Datel service (Datel II).	File No. I-T-C-2657
WESTERN UNION INTERNATIONAL, INC. For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	File No. I-T-C-2658

MEMORANDUM OPINION AND ORDER

Adopted: March 9, 1978 Released: April 3 , 1978

By the Commission:

1. The Commission is herein considering a Petition for Partial Reconsideration filed February 11, 1977 by RCA Global Communications, Inc. (RCA). The petition seeks reconsideration of that portion of Memorandum Opinion, Order, Authorization and Certificate, 63 FCC 2d 402 (1977) (Decision), which grants the above-captioned applications of Graphnet Systems, Inc. (Graphnet) and Telenet Communications Corporation (Telenet). On March

14, 1977, Graphnet and Telenet each filed oppositions to the RCA petition. RCA submitted a reply on April 1, 1977. Comments on RCA's petition were filed by TRT Telecommunications Corporation on March 14, 1977. 1/ The Decision authorizes Graphnet to obtain circuits from the Communications Satellite Corporation (Comsat) in order to extend its facsimile transmission services, which it currently operates within the contiguous United States, to various European countries, and it authorizes Telenet to acquire circuits from Comsat in order to extend its packet-switched data communications service, which it currently operates within the contiguous United States, to the United Kingdom. These authorizations were specifically conditioned on Graphnet and Telenet obtaining operating agreements with foreign operating entities. The Decision also reserved the Commission's authority to require at a future date, if conditions warrant, that these carriers offer their international services through corporate entities separate and distinct from the entities offering service within the contiguous states. In addition to granting the applications of Graphnet and Telenet, the Decision also granted the applications of RCA and Western Union International, Inc. (WUI) to provide their new data services on an experimental basis for one year, as requested. Recognizing the developmental nature of all of these services, the authorizations were subject to reporting requirements concerning the operational aspects of the services, the number and type of customers served and the costs and revenues associated with these new service offerings. 2/

1/ Also before the Commission are motions to strike the TRT pleading filed by Telenet on April 1, 1977 and by Graphnet on April 8, 1977. These motions allege that the TRT pleading, styled as "Comments", is an untimely petition for reconsideration and should be rejected. Interested parties are entitled to file comments either in support of or in opposition to a petition filed with the Commission. 47 C.F.R.§1.106. However, when a party independently seeks some form of relief concerning the Commission's action, its pleading must be interpreted as a petition for reconsideration. Pursuant to Section 405 of the Communications Act, 47 USC 405, petitions for reconsideration must be filed within thirty days of the release of the decision. To the extent TRT is requesting that the authorizations be set aside pending an evidentiary hearing, it seeks reconsideration of the Commission's Decision. The request will therefore be dismissed because it was filed more than thirty days after the release of the Decision. The substantive issues raised by the TRT comments are considered in the course of our discussion concerning the RCA petition.

2/ Graphnet and Telenet have not obtained operating agreements with foreign entities and thus have not commenced service. The Commission granted RCA and WUI one-year experimental authority as applied for. RCA and WUI actually commenced their services in August, 1977 and February, 1977 respectively. Upon the expiration of their one-year experimental authority, RCA and WUI requested an extension of such authority. The Commission granted these requests by temporary authorizations of January 9, 1978.

I. RCA's Initial Pleading

3. The thrust of RCA's petition is that the Decision with respect to the Graphnet and Telenet authorizations is an abrupt departure from established Commission policies and procedures pertaining to international service authorizations, that the Decision failed to consider various issues raised by RCA and others concerning the Graphnet and Telenet applications, and that the Commission failed to assess adequately and appropriately the impact that these authorizations will have on the international marketplace and the overseas carriers.

4. RCA states that the apparent intention of the Decision is to restructure the international market for data communications by opening up the international sector to unlimited competition through these authorizations and others which RCA alleges the Commission has promised for the future. The Commission, according to RCA, erred in failing to conduct a proceeding to ascertain the effect of such a policy on the existing overseas carriers or on the using public. RCA believes that this Decision and others 3/

3/ These other proceedings RCA refers to include: Overseas Dataphone Decision, 57 FCC 2d 705 (1976) aff'd ITT World Communications Inc. v FCC 555 F2d 1125 (2d Cir. 1977) (Commission will accept applications from the American Telephone and Telegraph Company and the international record carriers to provide overseas dataphone-type services); In re TRT Telecommunications Corporation, 35 FCC 2d 950 (1974) (authorization of TRT to directly serve Italy); In re TRT Telecommunications Corporation, 46 FCC 2d 1042 (1974) (authorization of TRT to directly serve the United Kingdom); In re TRT Telecommunications Corporation, 49 FCC 2d 1408 (1974) (authorization of TRT to directly serve Germany); In re TRT Telecommunications Corporation, File No. I-T-C-2492-9, released September 23, 1975 (authorization of TRT to directly serve Switzerland); In re French Telegraph and Cable Company, File No. T-C-2112, released May 23, 1968 (authorization of French Cable and Telegraph company to directly serve the United Kingdom); Resale and Shared Use of Common Carrier Facilities and Services, 60 FCC 2d 261 (1976) recon. granted in part 62 FCC 2d 588 (1977) aff'd Case No. 77-4057, 2d Cir. decided January 26, 1978 (policy established whereby entities may resell certain facilties and services of other common carriers after certification while certain facilities and services of common carriers may be shared by non-carrier entites); In re Applications for Authority to Participate in Maritime Commercial Satellite System, 52 FCC 2d 983 (1975) recon. 62 FCC 2d 660, remanded on motion of the Commission RCA Global Communications, Inc. v. FCC, Case No. 77-1096, D.C. Cir. decided October 6, 1977 (authorization requiring shore-end interconnection among U.S. carriers providing maritime Satellite Services); Customer Use of Telex Service, 62 FCC 2d 414 (1976) (Notice of Proposed Rulemaking regarding interconnection of telex networks among the international record carriers and the Western Union Telegraph Company). In re Western Union Telegraph Company, 55 FCC 2d 668 (1975) rev'd Western Union International, Inc. v. FCC 544 F2d 87 (2d cir. 1977) cert. denied. 46 L.W. 3257 (1977) (Commission will accept application from Western Union to provide Mailgram service to Hawaii).

constitute de facto implementation of an pro-competition policy without adequate inquiry into the effects of such policy on the public interest. RCA believes that the application should be deferred pending completion of a proceeding designed "to address the feasibility of increased competition in the limited international market and the framework in which such competition may take place." 4/

5. RCA states that the Commission did not apply the proper judicial standards which require that before additional competition is authorized the Commission must find that additional competition is reasonably feasible and that there is a reasonable expectation that the competition will provide some beneficial effect. FCC v. RCA Communications, Inc., 346 U.S. 86 (1955); Hawaiian Telephone Co. v. FCC, 498 F2d 771 (D.C. Cir. 1974). RCA argues that the Commission failed to properly take into account the impact that present and future authorizations will have upon the viability of existing U.S. overseas carriers and their ability to furnish their public services. 5/ RCA argues that the international data communications market is more limited than the domestic market and is more vulnerable to fragmentation. RCA states that "[t]his is especially true where the dimensions of the international market really are not known at this time, even though it is estimated that such market is growing and will prove to be substantial in the future."6/

6. Another public interest factor alleged by RCA to have been ignored by the Commission is that Graphnet and Telenet would obtain an unfair advantage over existing carriers because, as resellers of communications services, 7/ they would have no investment in communications facilities. The existing carriers, however, have substantial investment in communications facilities and a sufficient rate of return is required on these investments in order for the carriers to continue to provide their public services. RCA states that in a competitive environment the existing carriers would be constrained to recovering their investment in these facilities while the resellers would have a "certain flexibility." 8/

7. RCA also asserts that in authorizing Graphnet and Telenet to to obtain facilities directly from the Communications Satellite Corporation (Comsat) the Commission made no reference to standards set out in the

---

4/ RCA Petition, p. 7.

5/ RCA Petition, p. 10

6/ RCA Petition, p. 10

7/ Resale carriers subscribe to the communications services and facilities of an underlying carrier and then reoffer the services or facilities to the public. Graphnet and Telenet are resale carriers which obtain services and facilities furnished by an underlying carrier, supplement them with additional services or facilities and offer the communications package to the public. See Resale and Shared Use of Common Carrier Facilities and Services, 60 FCC 2d at 271.

8/ RCA Petition, p. 11

Authorized User Decisions, 4 FCC 2d 421 (1966); recon. 6 FCC 2d 593 (1966), or to the manner in which Graphnet and Telenet relate to those standards. RCA's concern is that in obtaining the facilities directly from Comsat, Graphnet and Telenet would be able to bypass the existing carriers.

8. RCA argues that the Commission in its Decision "misses the point" 9/ as to the competitive advantage that Graphnet and Telenet would allegedly obtain by virtue of their ability to provide both international and domestic service through single corporate entities. RCA disagrees with the Commission's conclusion that Section 222 of the Communications Act and the gateway concept contained therein will not unduly burden RCA's ability to compete. The Decision, according to RCA, confers upon Graphnet and Telenet a "gateway" in each of the cities in which they now operate domestic networks. RCA argues that the Decision relegates the gateway issue to Docket 19660 10/, a proceeding in which the Commission has found that some new gateways should be authorized; however, since no further proceedings have been scheduled in that Docket, RCA believes that the Commission has effectively denied pending requests by international carriers for additional authorizations. RCA states that in the new international marketplace which allegedly is envisioned, some competitors would be subject to gateway restrictions while others would not. RCA also states that the Commission's conclusion that RCA has certain competitive advantages by virtue of its established standing in the international field is mistaken. While the Commission concludes that RCA's ability to interconnect with domestic carriers to provide its overseas data service allows RCA to be sufficiently flexible and highly competitive, RCA states that the degree of flexibility in the interconnect situation is diminished because RCA cannot control the domestic entity other than by negotiated interconnect contract provisions. In addition, the authorization of Graphnet and Telenet to provide their international services through the same corporate entities as they provide domestic service will allow U.S. users with both domestic and international communications requirements to turn to Graphnet and Telenet as single-source suppliers of communications services rather than to a domestic carrier with an interconnection agreement with RCA.

9. RCA further claims that Graphnet and Telenet are not subject to the same kind of rate base regulation as RCA, causing disparate regulatory treatment. It believes that if competition in the international marketplace is to be full and fair, Commission scrutiny of rate of return levels and other elements of operation must be the same for all carriers. It suggests that if the Commission's objective is to promote additional competition, the kind of rate regulation applicable to international carriers should be fully re-examined with a view toward relaxation of rate regulation.

9/ RCA Petition, p. 9

10/ Scope of Operations of the International Record Carriers in the Continental United States, 38 FCC 2d 543 (1972), 54 FCC 2d 532 (1975).

10. RCA also questions the Commission's findings concerning Graphnet's and Telenet's qualifications. It states that the Commission made the finding without addressing a question raised by RCA concerning the legality of a previous Telenet authorization to serve Canada. It also alleges that, so far as it is aware, Telenet's revenues do not exceed its costs. RCA also states that it suspects that Graphnet's operations are marginal and it alleges that Graphnet lacks legal qualification to provide its service because it has not implemented its service in a manner consistent with its original authorization. RCA believes the Commission must provide support for its conclusion regarding qualifications because arrangements with foreign administrations will be involved.

11. The Commission's authorization of Graphnet and Telenet is termed an abrupt and unexplained departure from Commission practice requiring operating agreements with foreign correspondents as a condition precedent to the grant of an authorization. RCA states that the operating agreement addresses the terms and conditions of service and the division of tolls which are key elements in a public interest finding. The licensing approach adopted will equip U.S. international carriers "with 'hunting licenses' and allow them to venture worldwide 'to find a partner' with which to do business." 11/ RCA believes that the result will be that foreign administrations will be pressured to do business with an unknown number of U.S. carriers; that foreign administrations will be in a position to negotiate the best deal from any one of those carriers; and that other carriers could be "whipsawed" into unfavorable operating agreements with foreign administrations.

II. Telenet's Position

12. Telenet takes issue with RCA's position that a rulemaking proceeding is required before action can be taken on the Graphnet and Telenet applications. According to Telenet, RCA fails to point out any new policies which derive from the grant of the applications. In Telenet's view, the Commission has wide discretion to proceed either by general rulemaking or by dealing with specific applications, tailoring its procedures to the specific matters before it. Telenet states that RCA is wrong in asserting that the Commission's Decision extends its domestic competition policy of open entry to the international communications field. The Decision, in Telenet's view, demonstrates that the Commission's attitude toward such a policy "open minded" 12/ since it specifically stated that while it would not preclude consideration of additional applications for new data services, it was not making a general finding requiring grant of such applications. Telenet believes that RCA's suggestion that the Commission should set aside the authorizations pending the completion of an inquiry into such issues as feasibility of competition is disingenuous; it is merely an attempt by an established entity to preserve the status quo by requiring that even the slightest changes in that status be "studied to death." 13/

11/ RCA Petition, p. 9.

12/ Telenet Opposition, p. 22

13/ Telenet Opposition, p. 18

In Telenet's view, the Commission did not merely authorize additional competition, it authorized a new and innovative service for which there is a demonstrated public need and which the established carriers were either unwilling or unable to provide. If the international data communications market is limited, Telenet believes it is only because the established carriers have not stayed abreast of technical innovations in a rapidly advancing field or provided new and innovative service at attractive prices. According to Telenet such a situation is ameliorated by authorizing new efficient and cost effective services to meet a latent demand not met by the established carriers.

13. In granting its application, Telenet believes that the Commission has properly applied relevant judicial precedent. Although it states that there is a distinction between its application and the situations considered in FCC v. RCA Communications, Inc., supra and Hawaiian Telephone Company v. FCC, supra, Telenet states that the Commission has met the requirements imposed by these cases. The distinction derives from the fact that the applicant in each of these cases was seeking to offer a service identical to those already offered by other carriers to the particular geographical point. In that instance, argues Telenet, it is not unreasonable to require the new applicant to demonstrate that the additional competition would benefit the public. Because Telenet's proposal involves an essentially new service which can be expected to have a stimulative effect on the market, creating a new market where one previously did not exist, consideration of the public benefit of additional competition is not directly applicable. Nevertheless, the Commission's Decision discusses the nature of existing communications services, their deficiencies relative to the public need, and the benefits that the proposed services would provide.

14. Telenet disagrees with RCA's view that there is a regulatory distinction between itself and RCA's claimed status as an underlying carrier. Like RCA, Telenet states that it also has substantial investment in communications facilities including computer switching equipment and software which are exclusively dedicated to communications purposes. Telenet also argues that RCA's position as a lessee of satellite circuits from Comsat places it in no different situation than Telenet as to its satellite-based services. Telenet notes that in Resale and Shared Use of Common Carrier Facilities and Services, supra, the Commission declined to make regulatory distinctions between entities engaged in resale activities or those furnishing only underlying facilities or combinations of both.

15. Telenet also argues that its authorization is consistent with and in support of the Communications Satellite Act of 1962 and the Authorized User policies established thereunder. Telenet states that in RCA's original "Comments" on the Telenet application, RCA claimed that Telenet could not be classified as an authorized user under the Commission's Authorized User Decisions because Telenet "looked more like a user than a carrier." 14/ Telenet states that the provisions of the 1962 Act apply to all present and future authorized carriers, and since it has obtained

---

14/ Telenet Opposition, p. 18.

Section 214 authority, there is no question as to its status as an authorized user of satellite facilities.

16. Telenet asserts that RCA's claim that it would be competitively disadvantaged by permitting Telenet to offer both domestic and international packet-switching services was fully dealt with in the Decision and that the Commission correctly concluded that RCA and the existing international record carriers enjoy a substantial advantage by virtue of being already established and that Graphnet and Telenet as small entities are not in a position to cross-subsidize to the detriment of RCA or the other established carriers.

17. Telenet states that it does not enjoy any regulatory advantages vis-a-vis RCA. Both entities are fully subject to the provisions of the Communications Act. With specific reference to rate regulation, Telenet states that in Resale and Shared Use of Common Carrier Facilities and Service, supra, the Commission expressly rejected relaxing tariff filing requirements for resale entities and made them fully subject to all substantive rules for rate filings.

18. Telenet believes that no valid question has been raised concerning Telenet's legal qualifications. Telenet states that the question concerning the legality of the extension of its service to Canada was improperly raised by RCA in its reply pleading concerning the application and that no independent complaint to the Commission on this subject has ever been filed by RCA. Telenet's tariff, which explicitly includes service to Canada, has never been suspended and therefore, in Telenet's view, it must be presumed lawful.

19. Telenet states that RCA is incorrect in its statement that the Commission has always required operating agreements prior to authorization. In support of its position, Telenet submits that unless a carrier's Section 214 authorization is specifically limited in geographical scope, it may expand the particular authorized service to additional points merely by amending its tariff. Telenet argues that such broad grants of authority present exactly the same situation as the grant of authority to serve a particular geographic point prior to obtaining an operating agreement, i.e., in both situations the existence of an operating agreement is not the sine qua non of a finding that the service will meet the public interest convenience and necessity. Telenet also argues that forcing it to obtain an operating agreement prior to authorization is an untenable alternative which may serve to effectively prevent any new entrants to the international communications market.

III. Graphnet's Position

20. Graphnet asserts that RCA is not only rearguing its pre-Decision positions but also is raising new matters not contained in its pre-Decision pleadings. Graphnet states that RCA submitted three brief pleadings in response to its application and that these pleadings were primarily concerned with RCA's contention that the application should be denied because Graphnet had not yet obtained a service agreement. Only passing reference was made to other issues and in the summary treatment

given these issues RCA provided no supporting rationale. Graphnet argues that on reconsideration RCA has failed to demonstrate why the additional matters could not be raised in its pre-Decision pleadings. Graphnet states that under established precedent the burden for the petitioner on reconsideration is far greater than it is in the first instance and that RCA has failed to substantiate any contentions which would require grant of its petition for reconsideration.

21. Graphnet states that the Commission did not, by its authorization, adopt a policy of open competition in the international communications market. The Commission stated that it would not refuse to consider future applications and that the authorizations it was granting would provide valuable information to guide any needed future policy concerning data services. In Graphnet's view, the Decision was an adjudication of the specific applications involved rather than a legislative pronouncement establishing rules of policy of general applicability.

22. Graphnet states that the Commission directly addressed and disposed of all issues actually raised in the pre-Decision pleadings concerning its application. According to Graphnet, the Commission fully discussed the impact of Graphnet's authorization on the viability of existing U.S. carriers. The Commission set forth its views and estimates as to the size of the international data communications market and RCA's only challenge to these findings is that the dimensions of the market are not known at this time even though RCA states that it is estimated that the market is growing and will prove to be substantial. The impact of Graphnet's authorization on the viability of the overseas carriers was subsumed in the Commission's discussion of the competitive effects of the Graphnet and Telenet proposals on services offered by the existing carriers. Graphnet submits that RCA has provided only generalized opinions and no factual information which shows the Commission's conclusions regarding these issues are incorrect.

23. Graphnet questions whether the entry of a company as small as Graphnet can threaten the economic survival of RCA or the continued provision of its services. Graphnet states that RCA does not present any facts which suggest that this is the case or which would disturb the Commission's conclusion that it will not. RCA also does not factually demonstrate any public benefit in requiring Graphnet to establish separate corporations for its domestic and international operations, nor does it identify any public detriment which will result from the absence of such a requirement. In Graphnet's view, its claims of competitive disadvantage by virtue of Section 222 gateway limitations are generally a reiteration of its pre-Decision pleadings and are unsupported and conclusory. In asserting that an advantage derives from Graphnet's ability to act as a single-source supplier while RCA is limited to domestic access at the gateway cities, RCA fails to demonstrate precisely how this amounts to an undeserved marketing advantage or in what meaningful way it hinders RCA's ability to compete. In the absence of a demonstration of factual support for RCA's contentions, Graphnet believes the Commission should not alter its findings.

24. Graphnet asserts that the Commission's decision is fully consistent with the holdings in FCC v. RCA Communications, Inc., supra, and Hawaiian Telephone Co. v. FCC, supra. Graphnet states that RCA does not assert that the Commission failed to show that Graphnet's entry is reasonably feasible and that it may have some beneficial public effect or that the Commission's findings are without foundation.

25. Graphnet also states that the Commission fully discussed the absence of Graphnet agreements with foreign correspondents and concluded that rather than requiring such agreements as a condition precedent to the grant of an authorization, the public interest would be better served if approval of such agreement were a condition subsequent to the authorization. Graphnet states that RCA has not put forth in its reconsideration petition a single reason why this approach is not adequate particularly when the alternative would be to deny new carriers the opportunity to obtain such service agreements.

26. Regarding its qualifications, Graphnet states that it has been an authorized common carrier for more than two years and, prior to the decision in this case, has twice been found to be qualified by the Commission. Its application contained all relevant information and the Commission properly concluded that it was qualified to offer its proposed services. In the reconsideration petition, Graphnet asserts, RCA offers no information indicating this finding is in error.

IV. TRT's Position

27. TRT's comments in support of the RCA petition state that the fundamental issue raised by these applications is whether the data services should be provided as interconnected services from authorized gateways by international carriers or whether they should be provided as through services by domestic carriers. TRT states that Commission policy has traditionally been to apply the former approach and that the Commission departs from that policy without any investigation as to the purposes of the separations policy, why it is inapplicable to the new services and whether fair competition between the new entrants through services and the existing carriers is feasible.

V. RCA's Reply

28. In reply, RCA states that neither Graphnet nor Telenet address the essence of its reconsideration request, i.e., the impact that their authorizations, if implemented, will have upon the ability of RCA to furnish its public services in view of the competitive restrictions which do not apply to Graphnet or Telenet. RCA believes it has fully delineated its concerns in its pleadings addressing both the Graphnet and Telenet applications and in its reconsideration request. RCA also states that Graphnet is proposing to provide message telegram service rather than the type of data service which RCA believes the Commission interpreted in its Decision. RCA does not believe additional competition is reasonably feasible in the international telegram market and the issue of RCA's

continued ability to offer its services requires due consideration in terms of this market as well as the more sophisticated data communications market.

VI. Discussion

A. Applicable Judicial and Statutory Standards

29. RCA seeks reconsideration of our grant of the application of Graphnet to acquire satellite circuits in order to provide its communications service to various European nations and our grant of the application of Telenet to acquire satellite circuits in order to provide its communications service to the United Kingdom. The statutory requirement for the approval of an application to acquire facilities is contained in Section 214 of the Communications Act, 47 U.S.C. Section 214. The Commission's rules require that a carrier requesting such authority must demonstrate that the public interest will be served by the acquisitions of the proposed facilities.

30. When the Commission considers an application for proposed facilities, it must first consider the situation as it then exists and then determine whether it is in the public interest, convenience and necessity to authorize such facilities. Hawaiian Telephone Company v. FCC, 498 F2d. 771 (D.C. Cir., 1974). The Commission may not grant authorization for such facilities just to create competition for its own sake. However, the Supreme Court has held that it is permissible for the Commission to grant such authorizations whenever it can warrant that the competition will be in the public interest. FCC v. RCA Communications Inc., supra.

B. Need for Additional Service

31. In our Decision we found that there is a growing public need for sophisticated communications services which would interconnect data terminals in the United States with data terminals at foreign points. Our conclusion was based on the following factors: the number of data terminals, including facsimile, presently in operation and the predicted growth in the number of terminals over the next decade; the growth in the number of domestic networks and foreign data networks and the need to provide a means whereby these networks can be interconnected; the multinational character of business and its dependency on transaction-oriented communications; the development of unique data bases which are at overseas points; cost ineffectiveness associated with using existing services and technologies to provide transaction-oriented communications; technical inefficiencies associated with using existing services and technologies because terminals are often incompatible. Not only is our finding of public need supported by independent studies of the overseas data communications market referenced in Overseas Dataphone Services, supra, but it is reflected in the numerous filings engendered by the Graphnet and Telenet applications. More than fifteen parties, including corporations

need for cost-efficient interactive overseas data communications services. In addition, existing and potential Graphnet customers have indicated a need to utilize Graphnet's system to communicate with addressee facsimile terminals located in various European countries. The finding of public need for additional service is not controverted by RCA. 15/

32. Having shown that a need clearly exists for new and additional services, it was incumbent on the Commission to determine how the public interest in the provision of these services could best be met. The Commission found that the public need would be best met by authorizing RCA to provide its service and also authorizing WUI, Telenet and Graphnet to provide their respective services. RCA contests only the Telenet and Graphnet authorizations.

C. Public Benefits of the Graphnet and Telenet Proposals

33. The Graphnet service offers communications users a unique store and forward facsimile service which permits users to access overseas facsimile terminals with speed, reliability and flexibility not available under existing service offerings. Under normal circumstances, facsimile terminals may receive communications only from other facsimile terminals with which they are compatible. Operating in a mode similar to its domestic network, the Graphnet service will allow communications between facsimile terminals which would otherwise be incompatible. In addition, it will permit communications between virtually any digital device, including TWX, telex and computers, on the one hand, and facsimile terminals on the other. The network has a multi-address capability which operates without regard to the varying types of facsimile terminals at the distant locations. All of these facsimile service features are not currently offered to U.S. users with European communications requirements by the existing international record carriers.

34. The Telenet service employs packet-switching technology and includes certain unique characteristics which create advantages over existing services. The packet switching technology permits high quality data communications service tailored to meet the needs of individual users. Users establish end-to-end virtual connections between terminal devices within one second as compared to ten to twenty seconds for circuit-switched telephone calls. 16/ Telenet uses coding techniques to detect and correct

---

15/ In fact, in a recent RCA filing to provide an overseas data service nearly identical to the Telenet proposal, RCA cites the Commission's language in support of its application. See File No. I-T-C-2657-1, p. 10.

16/ The packet-switching network subdivides the subscribers' data into small segments referred to as packets. Each packet contains a destination code and packets originating at different subscribers may be intermixed over a single high speed line. No long haul capacity within the network is pre-assigned to a particular customer. Instead, users establish virtual connections, whereby the packets are automatically transferred from the originating terminal to the destination terminal and capacity is made available to a user only as data is transmitted.

transmission errors. Telenet maintains continuity of service through redundancy within the network, automatic monitoring equipment and network status reporting. The network is also capable of providing the user with information concerning the status of remote terminals. In addition, the Telenet service offers the user significant flexibility in mode of operation. As Telenet indicates in its application, this allows the user to perform more functions with a terminal or to access a greater number of terminals which lowers its average costs. The network performs all conversions necessary to insure compatibility with overseas networks which may operate under differing national standards and practices. Moreover, the packet-switched network permits highly efficient use of the overseas facilities and usage-sensitive pricing which will result in large reduction in cost over circuit-switched systems. This will permit small and medium users to engage in data communications on a more cost-efficient basis than is currently available.

D. Means For Meeting The Public Need for Additional Service

35. In our Decision we determined that the public interest would be most effectively addressed if Graphnet and Telenet along with RCA and WUI, were authorized to provide their proposed communications services. As discussed in the Decision, and as discussed with particular reference to Graphnet and Telenet in the preceding paragraphs, each of these service proposals are especially designed to meet a need for effective overseas data communications services. While they are all intended to address this "gap" in the availability of overseas data services, each service involves different transmission techniques and service characteristics. They also differ as to the method by which they are accessed. Graphnet and Telenet, for instance, will extend their existing domestic networks to provide service to international points. WUI proposed interconnection to the domestic Tymnet network. Access to RCA's network will be primarily via leased line.

36. It is clear that there exists a largely untapped new market for overseas services interconnecting data devices. In the context of a nascent field such as this one, where the existing market and its potential for growth are great but undefined, we concluded that the public interest would best be served by making available to the public a multiplicity of different service offerings. We believed that authorizing each of the four applicants would encourage innovation by allowing these carriers to implement their services and to refine their service offerings as customer requirements dictate. We believed that this approach would be most helpful in both stimulating and defining the market. The authorizations of Telenet and Graphnet are of particular relevance in this regard. These carriers have demonstrated a considerable expertise in providing their innovative communications services in the domestic sphere. The extension of their services into the competitive international market is likely to encourage innovation among all carriers offering similar kinds of data communications services. In requesting authority to provide their new service offerings both RCA and WUI characterized the authority sought as "experimental". While Graphnet and Telenet did not explicitly

seek authorization of limited duration or type, the nature of their services in the international field must be characterized as developmental. Accordingly, we imposed a requirement on all the carriers that they submit specific reports on the parameters of their service offerings and the revenues derived therefrom. 17/

37. As we stated in our Decision, we believed that

> "... through continuing supervision and evaluation of the service offerings, we can more fully ascertain the exact coutours of the public benefit in the provision of these services, and, where appropriate, delineate future policy concerning these overseas data communications services." 18/

This procedure affords the applicants an opportunity to demonstrate the public advantages in the use of their respective technologies and serves the public interest by providing the most informative input for further evaluation as to how the public interest can best be met. Network Project v. FCC, 511 F2d. 786 (D.C., 1975); United Telegraph Workers v. FCC, 436 F2d. 920 (D.C., 1975). The Commission's Decision can thus be best described as, first, the recognition of an unmet public need; and, second, an attempt to meet that need through the authorization, and continuing evaluation of, a variety of different service offerings. In this context, we shall turn now to the specific arguments raised by RCA.

E. Procedural Considerations

38. RCA argues that our Decision both on its own and when viewed in connection with other Commission actions, is defective because it extends the Commission's domestic competition policies to the international sphere without the benefit of a rulemaking proceeding which would ascertain the effect of such a policy extension on the international record carriers and the using public. RCA states that domestic pro-competition policies were developed in the Specialized Common Carrier Decision, 24 FCC 2d 318 (1970), 29 FCC 2d 870 (1971), recon. denied, 31 FCC 2d 1106 (1971) aff'd Washington Utilities and Transporation Commission v. FCC, 573 F2d 1142 (D.C. Cir. 1975) and the domestic satellite proceeding, Establishment of Domestic Communications Satellites by Non-Governmental Entities, 35 FCC 2d 844 (1972), 38 FCC 2d 665 (1972), aff'd Network Project v. FCC, 511 F2d 786 (D.C. Cir. 1975). RCA states that both of these policy decisions followed lengthy public inquiry into the public interest ramifications associated with an extension of competition in the domestic telecommunications markets. These inquiries, RCA states, included the size of the affected market, its ability to absorb additional entry and a need for innovation not met for a long time because of market domination by a monopolist provider. RCA states that the Decision, and others, constitute

---

17/ Decision, para. 22.

18/ Decision, para. 11.

de facto implementation of an unqualified pro-competition policy without adequate inquiry into the effects that such policy will have on the public interest.

39. First, RCA is incorrect in its belief that the Decision under reconsideration is the international counterpart of the Commission's decisions in the domestic sphere. In the Specialized Common Carrier Decision, the Commission concluded that "a general policy in favor of the entry of new carriers in the specialized communications field would serve the public interest, convenience, and necessity." 29 FCC 2d at 920. Similarly, in the domestic satellite proceeding the Commission concluded that the public interest would be served by "[o]pen entry to all pending applicants ...generally conditioned so as to maintain flexibility to authorize new technology, new usages and new applicants," 35 FCC 2d at 850. Under the policies as established in these decisions, the Commission would not consider arguments concerning economic impact as a basis for the denial of a specific application of a potential competitor in certain specialized fields. These arguments were addressed and considered in the context of broad rule-making proceedings. In contrast, the authorization of Graphnet and Telenet to provide their services does not establish, nor does it carry forward, a general policy favoring competition in the international sphere. Instead, each of these applications was considered on its own merits in terms of the relevant statutory guidelines contained in Sections 1 and 214 of the Communications Act, 47 U.S.C. Section 151, 214. 19/ Contrary to the viewpoint expressed by RCA, there are no additional authorizations "promised in the future." In fact, the Commission specifically stated that it recognized that technological advances may create the need and potential for additional varieties of service, but it was "not making a general finding that would require the grant of any application proposing a new service or transmission technique." 63 FCC 2d at 407.

40. RCA's argument implies that, even if the Graphnet and Telenet authorizations standing alone do not represent an extension of our domestic pro-competitive policies, these grants seen in conjunction with a series of prior decisions do constitute a de facto open competition policy. This is not the case. The Commission does not adhere to any general policy favoring competition for its own sake. On the contrary, consistent with all applicable judicial and statutory standards, the Commission will authorize additional competition only where it can be shown to be in the public interest to do so. A petitioner against an application has an opportunity to present evidence of the adverse impact of the application

---

19/ The fact that all of these applications were considered and granted in a single order is certainly no indication that the Commission intends to grant any application for new services placed before it. Consideration of these applications was combined because the issue raised by each of these applications was similar - the need for improved international services for data terminal users. The Commission concluded that because of the similar factual considerations involved, a consolidated proceeding would be most conducive to the proper dispatch of its statutory authority. 47 U.S.C. Section 154[j].

in view of prior grants affecting the competitive environment. 20/ In each of the cases cited by RCA where the issues of competition and competitive impact were relevant, they were considered in detail by the Commission in determining whether a grant of the particular application was warranted. 21/

41. The second aspect of RCA's argument appears to be that the Commission should be required to hold a rulemaking proceeding to determine broad policy in the area of competitive international telecommunications. There is no requirement, statutory or otherwise, that the Commission must develop a broad policy statement prior to consideration of individual applications. While policy and standards for future licensing may be developed in the context of rulemaking, there is no requirement that a general rulemaking precede consideration of license applications. The public interest standard which guides the Commission's substantive decisions guides its decisions as to whether to conduct rulemakings as well. Consequently, "subordinate questions of procedure in ascertaining the public interest when the Commission's licensing authority is involved are left within the Commission's discretion so long as it observes basic requirements designed for the protection of public as well as private interests." FCC v. WJR, The Goodwill Station, 337 US 265, 283. In this case, those requirements have been observed. RCA through its pre-Decision pleadings 22/ and its reconsideration petition has had ample opportunity to present issues of fact or law concerning the instant applications, and specifically concerning the impact of past authorizations on its ability to provide

---

20/ Specifically, as will be discussed below, RCA had an opportunity to demonstrate in a petition to deny the Graphnet or Telenet applications that it had suffered an adverse impact on its ability to provide communications services to the public as a result of the Commission's prior grants of competitive authority, and that the public would thus be harmed.

21/ RCA's argument that various other Commission decisions and the decision here subject to reconsideration constitute a de facto open competition policy is simply without merit. Only two of the decision's mentioned, Overseas Dataphone Services and In re Western Union involve new entry into the international record field and neither have been implemented. Resale and Shared Use of Common Carrier Facilities and Services is not applicable to the international field, 62 FCC 2d at 593. The TRT and French Telegraph Cable cases are merely certification cases involving established carriers in the field, no different than additional certifications sought by RCA as a matter of course. They are not indicative of a pro-competition policy; they only indicate that the public interest, convenience and necessity justified the additional service by those companies on the five routes involved. The telex interconnection proposals, still pending before the Commission, stem from a customer complaint to the Commission concerning difficulties and costs involved in accessing the various international record carriers for telex service; no additional entry is involved in that proceeding.

22/ Pursuant to special permission of the Commission, RCA and other parties filed two separate petitions concerning the Telenet application.

service to the public. The Commission, through its Decision and this proceeding, is giving full consideration to the issues raised. Moreover, circumstances may dictate that the Commission proceed on an ad hoc basis rather than by prior general rulemaking:

> [p]roblems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations the agency must retain power to deal with the problems on a case-by-case basis if the administrative process is to be effective. There is thus a very definite place for the case-by-case evolution of statutory standards, and the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. SEC v. Chenery Corp. 332 U.S. 194 (1947) 202-203.

42. We determined that it was not necessary or desirable to address the Graphnet and Telenet applications in the context of a rulemaking proceeding since we believed that in the situation presented by these applications we could gain more valuable information through the actual operating experience of the carriers than we would through the necessarily speculative pronouncements that would make up a rulemaking proceeding. American Airlines v. CAB, 359 F2d 624, 633 (D.C. Cir.) (en banc) cert. denied, 385 U.S. 543. It is for this reason that we instituted specific reporting requirements. As RCA itself recognized, "the dimensions of the international market are not known at this time even though it is estimated that such market is growing and will prove to be substantial 'in the future'." 23/ We concluded that the most appropriate method of ascertaining the dimensions of the continually evolving international market place would be through the carriers' reports of actual operations. Therefore, we exercised our broad discretion to adopt procedures and decided not to have a rulemaking proceeding on this subject, during the pendency of which the public would have been deprived of the benefits which these new service service offerings would bring. 24/

F. Competitive Considerations

43. RCA contends that the Decision is defective because the Commission failed to consider whether the authorization of these new

---

23/ RCA Petition, p.10

24/ We anticipate that we will shortly institute an inquiry into the role and extent of competition in the international communications industry. We expect that the information submitted pursuant to the reporting requirements in our session will play an integral part in the inquiry.

services would have an adverse impact on existing services. In our Decision we viewed these new services as inherently different from present service offerings, as addressing the needs of a new market and, accordingly, as having minimal direct impact on existing service offerings. For this reason we did not directly consider the impact of the Graphnet and Telenet proposals, or, for that matter, the impact of the international record carriers' proposals, on existing services. This analysis of the different markets for the new data services and existing services is clearly reflected in the Decision and results from the information provided by all the parties to the orginal applications. As we discussed above, each party to this proceeding has had ample opportunity to present evidence of adverse impact on existing services. No such evidence was presented in the original pleadings, nor has RCA presented anything other than speculation and unsubstantiated allegations in its Petition for Reconsideration.

44. The Commission's concern with the issue of adverse impact on existing services stems from its concern that a carrier's ability to continue to provide service has been, or will be, jeopardized by the grant of these applications, or by the grant of any of the Commission's prior authorizations in this area. The major existing services on the routes here involved are as follows: leased channel, Datel, telex and telegram. As pointed out in the Decision, the new services are not appropriate for users who require dedicated leased channels; therefore little impact can be expected on the leased channel market. Moreover, unlike the new Graphnet, Telenet, RCA and WUI services, Datel is not a subscriber service especially designed for customers with regular and continuing database access or facsimile transmission requirements. Datel service is most appropriately structured for users with more occasional access requirements. Because of the differences between the new services and Datel we fully expect that the services, including the extension of the Graphnet service to the various European nations and the extension of the Telenet service to the United Kingdom, will not significantly affect current Datel traffic and revenue levels, nor will it prevent the carriers from continuing to provide this service in the future.

45. We also conclude that the introduction of these services will have minimal effect on telex service. The Graphnet and Telenet services perform different functions than telex and serve different customer requirements. The only potential impact of the Graphnet authorization stems from the fact that one of the many ways that the Graphnet network can be accessed is via a telex terminal. It is conceivable that some users may find the telex-to-facsimile mode of transmission offered by the Graphnet network more suitable than the traditional telex-to-telex offerings. No party, however, has provided any evidence that this aspect of Graphnet's service will harmfully impact the established telex services or otherwise harm the public interest. As indicated, Graphnet's service offering is broader than this telex-to-facsimile service. Access to the Graphnet network is also available using CRT terminals, computer and facsimile devices. These are functions unrelated to the established telex networks. The only potential impact of the Telenet, Gaphnet, RCA and WUI authorizations, stems from the fact that remote databases can in some circumstances be accessed using a telex terminal. This method of access, as discussed in our Decision, is an ineffective means for remote operations for many users. 63 FCC

2d at 406. RCA, in its petition, does not challenge this conclusion. Consequently, we anticipate minimal use of telex terminals for computer access compared with use for the transmission of basic messages.

46. With regard to telegram service, RCA claims that the service proposed by Graphnet is, in fact, public message telegram service and that competition in the international telegram market is not reasonably feasible. This issue is first raised in RCA's Reply pleading to its reconsideration petition. The issue before us is whether the introduction of the Graphnet service will likely adversely impact RCA's ability to continue to provide its public message telegram service. While RCA has not provided any empirical evidence on the cross-elasticity of telegram service and Graphnet's service, we find that it is unlikely that Graphnet's service will signifigantly affect telegram service because the Graphnet service may be accessed only by subscribers who have appropriate terminals, and any cross-elasticity is limited only to that market segment. In the absence of any showing as to the extent to which Graphnet's service would divert revenues from telegram service, or the effect on RCA's continued ability to provide telegram service, we can not withhold from the public the innovative benefits of Graphnet's service.

47. In addition to functional and operational differences between the new data services, there are significant cost differences which reinforce our view that there is little direct cross-elasticity between them. Specifically, we found, in our Decision, that present services are not cost efficient for many users with certain data communications requirements. For example, since data communications tend to be intermittant and last for very short periods of time, only very high volume users will find it cost-efficient to interconnect overseas locations using leased channels. Because of the functional, operational, and cost differences between the new and existing services, we concluded that there will be no substantial diversion of traffic from existing services and that traffic generated by the newly authorized services will be the result of new demand stimulated among data and facsimile terminal users.

48. In contesting the Graphnet and Telenet applications, RCA questions whether the market for the new services with which our Decision is concerned is subject to what it terms "adverse fragmentation." 25/ However, no party to this proceeding has presented any facts which would support this contention. In view of our findings above and in the absence of a clear showing that the market will not support provision of service by those authorized in our Decision, there is no basis to deny any of these applicants' authorization to provide their services. As we have stated, the market for these services appears to be large and growing and the best means for meeting the demand for these new types of services, encouraging further development of the services, and establishing a factual basis for future decision making concerning new data services is to make the Graphnet, Telenet, WUI and RCA services available to the public. We conclude that the additional competition provided by Graphnet and Telenet is reasonably feasible and that there are grounds for a reasonable

---

25/ RCA Petition, p. 10

expectation that new entry will have some beneficial effects. FCC v. RCA Communications, Inc., supra.

49. While we were able to find that the acquisition of facilities to provide the services as applied for are in the public interest, we are unable to make an affirmative finding that the provision of other services would either serve or disserve the public interest. A fully-supported finding concerning this issue could only be made after evidence is taken in the context of a hearing. However, we do not believe that the authorization should be delayed pending such a hearing particularly when the Graphnet and Telenet applications do not indicate that they seek acquisition authority to provide other services. Moreover, in view of the apparent intentions of these applicants to provide only the services described in their applications, a hearing on these issues may be unnecessary and a fruitless and wasteful allocation of the Commission's resources. Therefore, pursuant to Section 1.110 of the Commission's Rules, 47 C.F.R. Section 1.110, we grant the Graphnet and Telenet certificates insofar as they authorize and permit the carriers to lease facilities and use them to provide services for which we have been able to make affirmative public interest findings, i.e., the services proposed in their application. The certificates will become effective upon our receipt of written acceptance from Graphnet or Telenet of the certificates, so limited, within thirty days of the release of this order. If we do not receive written acceptance from either carrier by that date, its certificate will not become effective and its application will be set for hearing to determine whether the provision of services other than those specifically applied for would be in the public interest. See Capital Telephone Company, Inc. v. FCC, 498 F. 2d 734 (D.C. Cir. 1974). 26/

G. Corporate Structure

50. RCA alleges that a competitive advantage accrues to Graphnet and Telenet by virtue of the provision of both domestic and international service. RCA asserts that if these carriers are permitted to offer service through single corporate entities they would be able to provide a single source of supply for customers with both domestic and international communications requirements. On the other hand, if it were required that service be provided through separate domestic and international entities, then interconnection of the domestic and international entities would not be permitted. United States Transmission Systems, 48 FCC 2d 859 (1974). We concluded in our Decision that the international record carriers will be formidable and effective competitors and that the suggested corporate arrangements, i.e., separate international and domestic subsidiaries of Graphnet and Telenet, are unnecessary at this time. In conjunction with domestic carriers, including AT&T, Western Union and specialized common

---

26/ We do not read MCI Telecommunications Corp. v. FCC _____ F. 2d _____ (D.C. Cir. decided July 28, 1977) as overruling Capital Telephone Company, Inc. v. FCC, supra, which recognizes the Commission's authority to require an applicant to choose between accepting a grant of limited certification and going through a hearing that would be required before the Commission would grant an unlimited certificate.

carriers, the record carriers can provide single source data communications services which, from the standpoint of the customer, would be no less valuable than single-source services offered by Graphnet or Telenet. As we pointed out in our Decision, this is precisely the kind of arrangement which RCA and WUI proposed for their data service offerings. RCA's allegations that the international record carriers will incur a competitive disadvantage are unsupported by probative evidence. More importantly, RCA has failed to show that a public detriment would result if Graphnet and Telenet are not subject to the same service limitations. Because of the experimental nature of these services, we stated in our Decision that the services would be subject to continuing review. We also stated that if, based on actual operating experience, it becomes apparent that the suggested corporate arrangements would be in the public interest, appropriate service restrictions would be instituted.

H. Regulatory Distinctions Between Graphnet and Telenet and the International Record Carriers

51. Another competitive disadvantage alleged by RCA stems from a supposed distinction between Graphnet and Telenet as resellers of communcations services and RCA as an investor in facilities. The resale concept does not apply in the international sphere. Resale and Shared Use of Common Carrier Facilities and Services. 62 FCC 2d at 593. In the domestic sphere, Telenet and Graphnet obtain communications services from "underlying" common carriers serving the public and provide their services through the addition of sophisticated switching centers and control units. In order to provide service to international points, these carriers will obtain facilities from Comsat in precisely the same manner as RCA does to provide its communications services. In addition to obtaining facilities from Comsat, the international record carriers have considerable investment in their own facilities. In order to continue to provide their services, they must make a sufficient rate of return on their investments. Likewise, Telenet and Graphnet have investment in communications facilities including computer switching equipment and software upon which they must make a sufficient return to remain viable. Consequently, the existing carriers and the new entrants are subject to similar constraints. No showing has been made that international record carriers will be unable to recover their investment and, as has been shown, no compelling case has been made that there will be an adverse competitive impact on the public served by the record carriers.

52. RCA also alleges that Graphnet and Telenet are subject to different types of rate regulation than the international carriers. It alleges that the international record carriers are subject to Commission scrutiny of rate of return levels and other elements of operation while Graphnet and Telenet are not subject to this type of regulation. It is alleged that competition between the international record carriers and the new entrants will be affected. RCA states that the introduction of additional competition into the international market-place should be accompanied by relaxation of regulation over existing carriers.

53. Graphnet and Telenet are subject to the same substantive rate regulation requirements as the international record carriers. All

carriers are subject to the requirements of Sections 201-205 of the Communications Act which require that carriers rates and regulations be just, reasonable and non-discriminatory. All carriers are also subject to Section 61.38 of the Commission's rules which requires that the carriers submit economic and other data in support of their service offerings. On the basis of information submitted pursuant to Section 61.38, RCA may challenge the lawfulness of a competitor's rate by filing a petition pursuant to Section 204 of the Act.

I. Implications of the Authorized User Decisions

54. The fact that Graphnet and Telenet would obtain facilities directly from Comsat rather than from the international record carriers does not violate any statutory or policy standard. In our Authorized User Decisions, supra, we considered the extent to which as a matter of law and policy "entities in the United States other than communications common carriers can be authorized under the Communications Satellite Act of 1962 (Satellite Act), to obtain telecommunication services directly from Comsat." 4 FCC 2d at 421. The Satellite Act is clear in its intention that Comsat serve United States carriers; the central question before the Commission in the Authorized User Decisions was the extent to which Comsat may furnish service directly to non-carrier entities. In our Authorized User Decision we noted that Section 305(a)(2) of the Satellite Act authorizes Comsat to "furnish for hire, channels of communications to United States communications common carriers and to other authorized entities, foreign and domestic ...". 47 U.S.C. Section 709(a)(2). Section 103(7) of the Satellite Act defines "communications common carrier" as having "the same meaning as the term common carrier has when used in the Communications Act of 1934, as amended...". 47 U.S.C. Section 703(7). Moreover, Section 201(c)(2) of the Act requires that the Commission in administering the provisions of the Communications Act of 1934, as supplemented and amended by the Satellite Act, "insure that all present and future authorized carriers shall have non-discriminatory use of, and equitable access to, the communications satellite system and satellite terminal stations under just and reasonable charges, classifications, practices, regulations and other terms and conditions and regulate the manner in which available facilities of the system and stations are allocated among such users thereof." 47 U.S.C. Section 721(c)(2). Accordingly, under the Communications Act and the Satellite Act, the Commission has an affirmative obligation to assure access to Comsat's facilities by those carriers authorized under the Communications Act of 1934. Graphnet and Telenet, by virtue of their Section 214 domestic authorizations and the authorizations obtained in our Decision, are common carriers and the Commission is not precluded from authorizing them to obtain service directly from Comsat. The provisions of the Satellite Act and our policy in the Authorized User Decisions were never intended to protect carriers obtaining facilities from Comsat from competition from other carriers authorized by the Commission to obtain such facilities.

J. Necessity of Operating Agreements

55. Our Decision fully addressed the issue of operating agreements with foreign administrations as a condition precedent to the grants of

authorization. Operating agreements show the concurrence of the foreign administrations and the settlement rates (division of tolls) to be applied in offering the service. We have indicated that the terms and conditions of service specified in these agreements is an important element in our consideration as to whether the services are in the overall public interest. 27/ We believe that, in this case, our regulatory judgment concerning this element can be as effectively applied prior to initiation of service as prior to authorization. In the case of these new entrants we concluded that the public interest may be disserved if agreements are required prior to authorization because, in that instance, the foreign administrations may be encouraged not to reach agreement concerning the overseas termination of the Graphnet and Telenet services. We therefore required that satisfactory agreements be executed and filed prior to initiation of service. 28/ Notice and opportunity to comment on the agreements will be provided. This procedure does not equip "would-be international U.S. carriers with a 'hunting license' to venture world-wide to find a partner;" 29/ the Decision is limited in the respect that two carriers, Graphnet and Telenet, have received conditional authorizations which will serve as a basis upon which they can negotiate operating agreements with administrations at the particular points set out in their applications. 30/

56. RCA believes the authorization of these carriers under this procedure will encourage "whipsawing," i.e., U.S. carriers will acceed to settlement rates most favorable to the foreign administration because the foreign administration will use its monopoly power to negotiate its most favorable agreement from among several U.S. carriers. In TRT Telecommunications Corp., Transmittal No. 698, released February 4, 1976, the Commission required uniformity of settlement arrangements between carriers and their foreign correspondents on parallel routes in order to deter whipsawing. This principle is applicable to the operations of the new entrants as well as to the existing carriers.

27/ Commercial Cable Co., et al., 28 FCC 283 (1960)

28/ Authorizations, conditioned on receipt of satisfactory operation agreements, have been granted in numerous instances. See, e.g., Communications Satellite Corp., et al., 1 FCC 2d 82 (1965) and AT&T, et al., 18 FCC 2d 402 (1969), TRT Telecommunications Corp., 46 FCC 2d 1042 (1974).

29/ Reconsideration petition, p. 9.

30/ We reject Telenet's argument that a carrier may expand an authorized service to points not specified in its application merely by filing a tariff, and that, consequently, operating agreements would not be required where such expanded service is involved. A carrier may serve only those geographical points encompassed by its authority. It must seek separate authority to serve additional points. An operating agreement is always a prerequisite to the offering of international service.

K. Legal and Financial Qualifications

57. RCA also takes issue with our finding concerning the financial and legal qualifications of Graphnet and Telenet to provide international service. With regard to Graphnet, its application indicates that its primary expenditure in providing the European service is $43,000 for the acquisition of switching equipment. In addition it will obtain circuits on a demand basis from Comsat pursuant to its Tariff No. 9, and it will obtain Series 3000 connecting circuits from AT&T pursuant to its Tariff No. 260. The June 30, 1977 consolidated balance sheet of Graphic Scanning Corporation, the parent company of Graphnet, indicates that it has current assets of $22,129,983 and current liabilities of $5,051,934. On this basis we find that Graphnet possesses the requisite financial qualifications to provide its service. We also find that Graphnet holds the requisite legal qualifications to provide its service despite RCA's assertion that it did not implement its original service authorization in accordance with its proposed timetable. Graphnet has expanded its authorized network consistent with its prudent business judgment and it currently offers substantially all of the service features which it proposed by its initial applications. A delay in implementing service authorizations is not an an uncommon occurrence. Datel-II, RCA's newly authorized service, for example, was not made fully operational until approximately nine months after authorization.

58. With regard to Telenet's financial qualifications, Telenet estimates its expenses during the first year of its operations of the United Kingdom service will be $240,000. The December 31, 1977 consolidated balance sheet of Telenet Corporation, parent company of Telenet, indicates current assets of $7,059,524 and current liabilities of $2,555,554. On this basis, we conclude that Telenet possesses the necessary financial qualifications to provide its service.

59. Telenet's legal qualifications are allegedly brought into doubt by virtue of the extension of Telenet's domestic service to Canada. In its Reply pleading concerning the Telenet application RCA alleged that Telenet was wrongfully authorized under Section 63.03, 47 CFR Section 63.03, 31/ to serve Canada and that the tariff for service to Canada contemplates service to points not encompassed by Telenet's Section 214 authority. Telenet's Section 214 authority was properly granted under applicable Section 63.03 procedures. No petitions to deny were filed concerning this application. RCA has not filed a complaint pursuant to Section 1.571 of the Commission's Rules concerning any unlawful service, nor has it filed a petition to reject or suspend the service. We find that RCA's claims do not justify denial of Telenet's application to extend its service to the United Kingdom.

31/ Section 63.03 of the Commission's Rules permits the "automatic" grant of application for supplemental facilities unless a petition to deny if filed within 21 days.

V. Conclusions

60. We reaffirm our finding of public need for additional overseas communications services which will interconnect data terminals. We have concluded that the Graphnet and Telenet proposals offer significant service benefits which would meet the needs of users who have been effectively foreclosed from overseas data communications by virtue of the technical and pricing limitations of existing services. In addition, we find that the authorization of these carriers will stimulate innovation in this developing market among all carriers which will further inure to the public interest. We also find that the authorization of Graphnet and Telenet to serve the international points specified in their applications will not affect the viability of the existing services of the international record carriers. Moreover, the international record carriers will be able to provide data services on a highly competitive basis with the Graphnet and Telenet service offerings. We also conclude that requiring satisfactory operating agreements prior to the initation of service rather than prior to authorization is the most practical means to assure that the Graphnet and Telenet services will in fact be made available to the public. We recognize the experimental nature of all of the services which have been authorized in this proceeding and emphasize that they are subject to continuing review with a view toward development of policy where appropriate.

61. Accordingly, IT IS ORDERED that, the authorizations of Graphnet Systems, Inc. in File Nos. I-P-C-11 and I-P-C-11A and Telenet Communications Corporation in File No. I-T-C-2634 ARE HEREBY MODIFIED as stated herein:

(a) The authorization of Graphnet Systems, Inc. is limited to the provision of facsimile communications services described in this Order.

(b) The authorization of Telenet Communications Corporation is limited to the provision of packet-switched data communications services described in this Order.

(c) Graphnet Systems, Inc. and Telenet Communications Corporation shall file written acceptances of their respective authorizations within 30 days of the date of release of this Order.

62. IT IS FURTHER ORDERED that, the petion for partial reconsideration filed by RCA Global Communications, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

Before the
Federal Communications Commission
Washington, D. C. 20554

In Re Applications of)
)
GRAPHNET SYSTEMS, INCORPORATED) File Nos. I-P-C-11
)
For authority to permit use of) I-P-C-11A
facsimile services to communicate)
with terminal devices located in)
Belgium, Denmark, France, Italy,)
The Netherlands, Norway, Spain,)
Sweden, Switzerland, The United)
Kingdom and West Germany.)
)
)
TELENET COMMUNICATIONS CORPORATION) File No. I-T-C-2634
)
For authority to extend packet-)
switched data communications)
service from the continental)
United States to the United King-)
dom and points beyond.)
)
)
RCA GLOBAL COMMUNICATIONS, INC.) File No. I-T-C-2657
)
For such modification of its)
existing authorizations as may be)
necessary to use its previously)
authorized facilities for the)
provision of an enhanced class of)
overseas Datel service (Datel II).)
)
)
WESTERN UNION INTERNATIONAL, INC.) File No. I-T-C-2658
)
For modification of its existing)
authorizations to use its pre-)
viously authorized facilities for)
the provision of Database service.)

ERRATA

Released:

1. The concluding sentences of paragraph 31 of the above-captioned Memorandum Opinion and Order, FCC 78-181, released April 3, 1978

should read as follows:

> More than fifteen parties, including corporations with overseas business interests, computer time-sharing services, computer equipment manufacturers and a university consortium, filed comments in support of the Telenet application. All of these comments expressed a need for cost-efficient interactive overseas data communications services. In addition, existing and potential Graphnet customers have indicated a need to utilize Graphnet's system to communicate with addressee facsimile terminals located in various European countries. The finding of public need for additional service is not controverted by RCA. 15/

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	)	
	)	
GRAPHNET SYSTEMS, INC.	)	
	)	
Application for Authority to Permit Use of Facsimile Services to Communicate With Terminal Devices Located In Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany	)	File No.

To: The Commission

APPLICATION

Graphnet Systems, Inc. (hereinafter "Graphnet"), hereby applies for such authority as may be necessary under Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. §214, to supplement certain of Graphnet's presently authorized facsimile and data communications services to permit communications by Graphnet subscribers with addressee facsimile terminal locations in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany.

Summary of Graphnet's Proposed Extension of Service

In its initial application to the Commission for certificate authority, Graphnet described in detail the nature of its proposed facsimile services, and set forth the considerations which warranted a grant of the application in the public interest. By Memorandum Opinion, Order and Certificate released January 14, 1974, 44 F.C.C.2d 800, the Commission approved the proposal.

The first so-called value-added carrier to do so, Graphnet commenced operations in January, 1975. Since that time, Graphnet has begun deployment of its proposed system, and has offered its services pursuant to tariffs duly filed with the Commission. With its accumulation of operating experience, Graphnet has continuously refined and adjusted its service offerings according to customer demands and requirements -- precisely the type of marketplace responsiveness the Commission contemplated in authorizing the competitive offering of Graphnet's services. The growth of Graphnet's subscriber base confirms the public need and demand for the unique communication capabilities Graphnet proposed, attests both the technical and commercial feasibility of their utilization, and demonstrates the diligence with which Graphnet has sought to implement the authority which the Commission granted.

In recent months, however, a number of existing and potential customers have indicated a need and desire to utilize Graphnet's system to communicate with addressee facsimile terminals located in various of the European countries. For the most part, such customers prefer to "bundle" their in-house communications, and present that traffic to a carrier in a single job stream. Where Graphnet has been providing services to such users, "unbundling" of those subscribers' bulk traffic has been required to "sort out," and refile elsewhere, communications destined for overseas points. That process represents significant inconvenience to customers, as well as complication and operating inefficiency for Graphnet. Moreover, the inability to handle such "bundled" traffic has been an inhibiting factor in some instances where prospective customers have been involved.

Based on such factors, as well as on Graphnet's own evaluation of the markets involved, Graphnet here requests such supplemental authority as the Commission may deem necessary to permit United States subscribers to utilize Graphnet's system capabilities to communicate with facsimile terminals at addressee locations in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany. The service proposed here will permit United States subscribers to input information from virtually any terminal source (e.g., CRT, digital device, computer, etc.), and have that information output on a receiving facsimile terminal in the European countries specified above.

It should be emphasized that the service here proposed does not materially differ from the services which Graphnet has already been authorized to provide within the United States. Rather, Graphnet seeks only to extend the geographic area within which delivery of communications to addressee facsimile terminal locations may be accomplished.[1] To utilize the proposed service, United States subscribers will access Graphnet's system precisely as is done now. Graphnet's computer switching system will accept the message, "translate" the data to be cognizable by the addressee terminal, seize an international channel, and output the communication over that channel for delivery to the appropriate terminal location in the European country involved.[2]

As with its present service offerings, Graphnet will employ necessary communication channels leased from existing carriers at tariffed rates. While Graphnet anticipates initially using the facilities of AT&T under its Tariff 263, other carrier facilities and services may be employed in the future, as customer needs, traffic volumes and other carrier requirements dictate.

1/ Graphnet also anticipates that, with the institution of the service proposed herein, foreign Graphnet subscribers will seek to utilize the Graphnet system for delivery of input information to receiving facsimile terminals in the United States, in accord with Graphnet's existing tariff. Such subscribers would bear the cost of accessing Graphnet's system through the use of other carriers' communication channels. And the geographic location at which Graphnet's system would receive such an incoming communication would be within the continental United States. Since Graphnet already has authority to provide its services within the continental United States and the District of Columbia, it is Graphnet's view that no additional Commission certificate authority is required to handle such incoming traffic.

2/ A more detailed description of how, as an operational matter, the service proposed herein will be integrated into Graphnet's currently authorized network is appended hereto as Attachment 1.

Detailed Information Concerning The Proposed Supplemental Service

To the extent that the provisions of Section 63.01 of the Commission's Rules may be applicable and pertinent, Graphnet submits the following information in support of this application. Where deemed to be necessary, a waiver is requested of those portions of Section 63.01 which are inapplicable or inappropriate because of the nature of the proposal herein.

1. Graphnet is a corporation organized under the laws of Delaware, and whose principal place of business is 99 West Sheffield Avenue, Englewood, New Jersey 07631. Graphnet is a wholly owned subsidiary of Graphic Scanning Corporation, a publicly owned Delaware corporation.

2. Correspondence concerning this application may be addressed to:

Mr. Barry Yampol
Graphnet ~~Systems, Inc.~~
99 West Sheffield Avenue
Englewood, New Jersey 07631

and

Joseph M. Kittner, Esq.
Edward P. Taptich, Esq.
McKenna, Wilkinson & Kittner
1150 - 17th Street, N.W.
Washington, D. C. 20036

3. Graphnet has been authorized by the Commission as a communications common carrier under Section 214 of the Communications Act of 1934, as amended.

4. The facilities covered by this application will be used to permit Graphnet subscribers in the contiguous 48 United States and the District of Columbia to communicate with addressee facsimile terminal locations throughout Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany. At present, Graphnet's offerings do not include communication to such locations. The facilities covered by this application will not be used to provide telephone or telegraph service, as those terms are usually understood.

5. For purposes of initial operations, Graphnet has based its projections on the employment of communication facilities obtained from AT&T under its Tariff F.C.C. No. 263, at the prevailing rates for such service. The facilities thus obtained will be used between Graphnet's computer switching facilities, currently located at Englewood, New Jersey, and addressee facsimile terminal locations throughout the European countries listed in paragraph 4.

6. The number of dial-up long-distance circuits to be employed will depend entirely on the volume of traffic destined for European locations. To the extent services such as Graphnet's are not presently available between the United States and Europe, and since the market for such services even within the United States is only now developing, precise estimates of initial and future traffic, and exact addressee terminal locations, are impossible. Based on its experience to date, however,

and on its general analysis of the anticipated market demand, Graphnet estimates the following traffic volumes:

Year of Service	No. of Communications
1st	72,000
2nd	132,600
3rd	202,800

As future message volume increases, Graphnet anticipates leasing dedicated transatlantic facilities from other carriers. When such dedicated facilities are required, and their location and configuration known, Graphnet would seek such further Commission authorization as might then be necessary.

7. The scope of revisions to Graphnet's tariff needed to implement the service proposed herein would be extremely narrow, and will, of course, be submitted when any required authority has been received. Regulations governing the service are essentially extant in Graphnet's present tariff provisions. Rates for the proposed service would be $8.50 for the first 4 minutes of system connect time, and $2.25 for each additional minute or fraction thereof.

8. As indicated in paragraph 6, above, predictions of traffic volume, and hence of costs and revenues, cannot be made with precision. Nonetheless, Graphnet has formulated the following general estimate of costs involved in the extension of service and the estimated revenues to be received at the proposed tariff rates:

Year of Operation	Costs	Revenues	Revenues Over Costs
1	$ 651,220	$ 612,000	($ 39,220)
2	1.138,720	1,127,100	(11,620)
3	[illegible]699,950	1,723,800	23,850
4	[illegible],010,840	3,136,500	125,660
5	4,933,650	5,244,500	310,850

A breakdown of the general components of those estimates is appended hereto as Attachment 2.

9. In Graphnet's opinion, a grant of the proposal herein will make available to communication users an unique store-and-forward, packet-switched facsimile service capability which does not have identical or similar counterparts among existing record services to the European countries proposed to be served herein. A general consideration of the public interest considerations involved are set forth in Attachment 3 hereto. As pointed out more fully therein, through the application of computer technology, Graphnet's proposed service will dramatically expand and improve current facsimile communications capabilities between the United States and Europe, thereby making its specialized use in international business data communications both economically and operationally feasible -- in most circumstances, for the first time. The primary purpose of the service proposed herein is to satisfy the fundamental need for an effective means to quickly transmit exact copies of documents and graphic data -- a major business need which cannot be met by any means other than facsimile, and which presently is not offered to facsimile users by any other communication common carrier.

10. The undersigned certifies, individually and for the applicant, that the statements made in this application are true, complete and correct to the best of his knowledge and belief, and are made in good faith.

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

By______________________________
Barry Yampol, President

February 18, 1976

ATTACHMENT 1

THE INTEGRATION OF GRAPHNET'S PROPOSED SERVICE INTO ITS AUTHORIZED SYSTEM OPERATIONS

In its initial application for Section 214 authority (File No. P-C-8586), Graphnet described in detail the communications network it proposed to establish -- its structure, capabilities and advantages. Graphnet also explained that it would establish its ultimate network configuration by transitional phases. Having only been operational for a year, Graphnet has not yet, of course, fully deployed its system. However, the same system concept and design described in its application continue to be Graphnet's objective, and substantial progress in that direction has been made during its initial service phase.

Graphnet will not here reiterate the details of its network set out in its earlier application. In order to understand how the service here proposed will be integrated into the overall operational plan, however, a summary of the system already authorized will be helpful. Basically, of course, Graphnet's system is designed to store and forward digitally encoded facsimile information, utilizing communication transmission facilities leased from existing common carriers. The system permits information to be input from virtually any type of terminal device or system, and to be delivered to a receiving facsimile terminal.

Operationally, a Graphnet subscriber, depending on traffic volume, either dials or is directly connected to a local concentrator (a mini-computer). By means of a special terminal signalling device, the subscriber identifies himself to the system for billing purposes and indicates delivery or routing instructions for the document he wishes to enter into the system. The local concentrator, after receipt of the address information, forwards the data to its regional computer processing center -- the "manager" of that geographic portion of the system -- for verification and storage. The concentrator is then commanded to send a special "go-ahead" signal to tell the subscriber to proceed. After receiving a go-ahead signal, the customer sends his facsimile document to the concentrator, where the information is digitized and compressed before being forwarded to a regional computer processing center for storage, routing, and delivery.

Each concentrator is linked by a full duplex 9600 bit-per-second data channel to a regional computer processing center. And in turn, regional processing centers are linked together with high-speed data channels. Once a document is received by the concentrator from a subscriber, the concentrator signals its regional computer processing center to accept and forward the information for delivery. Proper receipt of the information is then acknowledged to the calling party. If the addressee's concentrator is in the same regional center's distribution area, the regional center will accept the document and forward it directly to that concentrator at high speed (9600 bits-per second) for delivery. If, however, the addressee's concentrator is in another regional processing center's geographic area, the receiving center will accept the document and forward it at high speed (230,000 bits-per-second) to that regional center for relay to the addressee's concentrator for final delivery.

In either case, by the transmission of data control information, the appropriate regional processing center instructs the delivering local concentrator to dial the called party's telephone number for document delivery. (If the recipient is a directly connected terminal, of course, no dialing is required.) The concentrator dials the number and either receives an auto-answer tone or a [illegible] condition. The concentrator then passes this information to the regional processing center. If the terminal is busy, the document can be automatically diverted to a subscriber specified alternate facsimile machine for delivery. If the terminal is available, each compressed data packet is sent from the computer to the concentrator, where it is decompressed and reconverted to its analog signal form for transmission to the addressed terminal.

In the service offering proposed here, Graphnet's intention is to extend its present system concept to permit communication with terminals located in Europe. Graphnet concentrators located in the Metropolitan New York Area will dial directly via AT&T's overseas MTS to facsimile terminals in Europe, for delivery of United States Graphnet subscriber-generated traffic. As the actual volume of such traffic increases, dedicated private line facilities may be utilized for certain recipients.

Each such concentrator will also be capable of accepting input from European users on either a dial or dedicated line basis, again depending on traffic volume. Such traffic would be passed to a New York regional processing center computer for distribution through the Graphnet network for ultimate delivery to a United States facsimile device by the corresponding Graphnet local concentrator. Either United States or European generated input traffic could be in either a digital or facsimile form. Input from United States digital devices will be code converted to facsimile element representations by the New York concentrators for delivery to facsimile devices in Europe. Similarly, European-generated digital traffic will be converted to facsimile by the local United States delivery concentrator.

For the first three years of operation, it is estimated that one New York area concentrator will be sufficient to handle the anticipated volume. This number will grow to two concentrators in the fourth year, and three concentrators in the fifth year of operation.

Beyond the basic capabilities inherent in Graphnet's system generally, unique service features will also be available to both United States and European customers of the proposed service. Such a customer, for example, will be able to store signatures and corporation letterheads within the system. These signatures and letterheads can be automatically combined by the system with message text input from a digital or facsimile device to produce facsimile documents combining the signature, letterhead, and text. Additionally, a customer will be able to store and retrieve forms, message text or address lists for use in document preparation. Once a form, text or address list is stored in the system, a user can reference the particular item on input by means of a mnemonic code. The system will retrieve the appropriate information, associate it with the input and construct the individual documents.

ATTACHMENT 2

REVENUE AND COST ESTIMATES FOR THE PROPOSED GRAPHNET SERVICE*

	YEAR				
	1st	2nd	3rd	4th	5th
Revenues					
No. of Documents	72,000	132,600	202,800	369,000	617,000
Total Revenues	$ 612,000	$1,127,100	$1,723,800	$3,136,500	$5,244,500
Operating Costs					
Delivery Cost	528,480	973,280	1,488,550	2,708,460	4,528,780
Acceptance Cost	36,000	59,670	81,120	129,150	185,100
Marketing-Sales-Operational Personnel	27,500	38,500	49,500	71,500	93,500
Sales Literature & Marketing Expense	35,000	40,000	50,000	50,000	50,000
Equipment Maintenance	7,000	7,000	7,000	10,000	12,000
Occupancy Cost	5,000	5,000	5,000	6,000	7,500
Billing & Mailing	3,600	6,630	10,140	18,450	30,850
Depreciation - 5 Year (Straight Line)	8,640	8,640	8,640	17,280	25,970
Total Operating Costs	$ 651,220	$1,138,720	$1,699,950	$3,010,840	$4,933,650
Income (Loss)	$ (39,220)	$ (11,620)	$ 23,850	$ 125,660	$ 310,850
Equipment Purchase					
Concentrator	$ 43,200				
Concentrator				$ 43,200	
Concentrator					$ 43,200

* While Graphnet intends to offer any-digital-input/facsimile-output services in both directions, the cost and revenue figures herein are based only on Graphnet's facsimile-to-facsimile service offering from the United States to Europe. Use of the other digital input service capabilities would favorably impact the financial viability of the proposed offering.

ATTACHMENT 3

PUBLIC INTEREST CONSIDERATIONS INVOLVED

In its initial proposal (File No. P-C-8586), Graphnet detailed the manner in which its network would be structured and would operate. Moreover, the application explained at length the advantages Graphnet's facsimile services would provide communications users, and provided examples of usages where its services would be of particular advantage. In authorizing Graphnet to provide its services within the United States, the Commission found the availability of the proposed offerings to be in the public interest. As it was observed at one point:

> [N]either Western Union nor any other existing carrier offers a facsimile service by the use of 'packet switching' with the advantages inherent therein of greater reliability, speed, and flexibility of service. We have an obligation to make available to the public this new development and improvement in communications service irrespective of whether a showing has been made by Graphnet as to the adequacy of existing services to meet present market needs. . . . We believe that the showing by Graphnet that it will provide a facsimile service of significantly higher quality than that now offered by existing carriers is sufficient to warrant a grant of the application.

Graphnet Systems, Inc., 44 F.C.C.2d 800, 801-02 (1974).

Graphnet will not here repeat the discussion of public interest benefits which was contained in its original application. Suffice it to say, the recitations there presented are applicable here. And the same considerations which led to the Commission's ultimate public interest determinations in that instance are equally pertinent in this case. As with Graphnet's domestic United States services, the authorization here sought will extend to users seeking to communicate with overseas facsimile terminals a speed, reliability and flexibility of service not currently available. It will, for example, permit any United States Graphnet subscriber to communicate with any facsimile terminal in the foreign countries specified, regardless of the type of device used to input source information. At present, facsimile machines may only receive communications from another compatible facsimile machine. And indeed, many of the facsimile machines now in use are incompatible one with another. As described in its initial application, however, Graphnet's system permits any facsimile machine to communicate with any other, regardless of type. Moreover, while the system will deliver communications to facsimile terminals, it will accommodate input from virtually any digital device, such as TWX, Telex and Dataphone, and will accommodate direct computer output of documents for exact duplication at facsimile terminals as well.

The Graphnet service here proposed -- again, like current domestic services -- would also permit a user to input a document but once, and have that document transmitted in its exact form to a virtually unlimited number of addresses, regardless of the differing locations of the designees (in Europe or the United States), and without regard to the varying types of receiving facsimile devices involved. Speed and ease of document input and delivery will be further enhanced by the network's ability to accept data for busy terminals, and to store and output for later delivery when the terminal is available.

In short, the same basic service features on which the Commission predicated its initial public interest finding are what will be made available here. Only the geographic location of the receiving facsimile terminal will be different.

That there is a demand for such a service is readily evident. In its initial application, Graphnet outlined a great number of business areas -- banking, manufacturing, engineering, transportation, to name but a few -- in which the need for fast, accurate, cost-effective transmission of facsimile record communications is particularly needed. Graphnet's experience to date has confirmed users' desire for such a specialized communications option. The same need exists on an international basis. For as the extent of international commerce has increased, so has the need for more flexible, specialized international communications. And just as facsimile communications are a needed adjunct to existing domestic communications availabilities, so transatlantic facsimile has become an equally necessary addition to the present range of available record services. Confirming that fact, Graphnet has received strong indications of interest in the availability of such services, both from existing and from potential customers.

Beyond individual users' demands for transatlantic facsimile services, available statistical information highlights both the need for such services and the ability of the marketplace to support their provision. The Commission's grant of Graphnet's initial proposal, of course, was based in part on a recognition of the substantial and growing need for the specialized facsimile services Graphnet proposed to provide. Even a cursory comparison of the European and the United States markets confirms that the transatlantic need for the service proposed herein is equally compelling. As indicated in Graphnet's original application, the requirements within the United States for the instantaneous transmission of facsimile information has become increasingly evident. Various market analyses have shown that, notwithstanding such previously stated inhibiting factors as high communications costs, incompatibility of transceiver units and lengthy transmission time, the market for domestic facsimile communications -- both specialized and general business applications -- expanded at a rate of approximately 20% per year during the period 1966 to 1971. By the end of 1975, the number of units had increased to more than 110,000.

Future growth of the United States facsimile market has been uniformly forecast to increase even more rapidly. Earlier estimates of facsimile units in use had ranged between 70,000 to 80,000 to 1975, and 250,000 to 350,000 by 1980. Corresponding dollar market estimates for lease and service expenses had varied between $50 million to $70 million for 1975, and $125 million to $200 million by 1980. As can be seen, recent trends have established the market to be growing far more rapidly than earlier anticipated. Spurred in part by the introduction of lightweight portable facsimile transceivers, the number of facsimile units in use by the end of 1975 had nearly reached earlier estimates for 1977.

Facsimile message traffic, of course, has reflected, and will closely parallel, the foregoing figures. It has been estimated that total United States message volume was approximately 50 million pages in 1971 and that transmission expenditures for such traffic were in excess of $150 million. Earlier forecasts predicted 1975 volume would be around 100 million pages. Today that estimate is in excess of 150 million documents. On that basis -- and without giving effect to the market stimulation Graphnet's domestic service will have on total message traffic -- the 1975 market for facsimile message transmission expenditures would be more than $400 million, and would exceed $1 billion by 1980. Here again, however, the marketplace realities of the past two years have confirmed the substantial underestimation of earlier projections.

The number of facsimile terminal installations in Europe and The United Kingdom, although still far behind the United States, has been significant, and substantial growth, to over 84,000 units, is projected by 1982. Indeed, the European market for business facsimile use is expected to grow at a 30% to 35% rate. The United Kingdom is the largest market for facsimile in Europe today, with about 3,200 units installed and with a projected growth rate of 25% to 30% per year over the next few years. However, West Germany is potentially the largest market for facsimile in Europe because of its economic activity and the distribution of industry throughout the entire country. The current installed base of facsimile units in West Germany is about 2,800 units. The anticipated growth rate is projected to approximate 35% to 50% per year during the next five years.

Other significant markets in Europe are France, Italy, The Netherlands, Sweden, Belgium, Norway, Spain, Switzerland and Denmark. The installed base of facsimile terminals in Western Europe at the end of 1974 was approximately 11,000, and is projected to be approximately 50,000 by year end 1980.

With the projected rate of growth for the installation of terminals in Europe being approximately twice that in the United States, more and more users of facsimile service will be requesting an efficient, economical means of transmitting facsimile images between the two continents. To date, however, a number of factors have prevented a full realization of the potential for transatlantic facsimile communications. There is an incompatibility among many existing facsimile units, and there is no present method for any of those units to receive communications from any type of non-facsimile device. Moreover, there is no service presently available which can overcome those inhibiting factors, and which is both efficient and cost effective.

Graphnet proposes to provide such a service. And the immediate public interest advantages of authorizing such a service are most dramatic. For the first time, communications between and among the present 125,000 facsimile units in the United States and Western Europe will be feasible. Perhaps even more striking, and again for the first time, communications between those facsimile terminals and the 500,000 telex-type terminals in the United States and Western Europe will be made possible. The service, in short, will add a wholly new -- and badly needed -- dimension to currently available transatlantic record communication services.

Beyond merely meeting users' demands, of course, grant of the proposal here would have other beneficial effects. For example, since Graphnet's proposed service would promote a rapidly expanding market for facsimile transmission between the United States and Europe, an important effect will be a broadening of the market for facsimile equipment. Such an effort will not only result in improved sales for equipment manufacturers, but will also provide an additional competitive incentive for innovation in facsimile hardware and services. Moreover, based on the experience gained in the offering of Graphnet's proposed service, and on the expertise in solving facsimile/computer interface problems, it can be anticipated that significant contributions to the general area of facsimile technology will result -- with communication users generally being the beneficiaries.

In summary, therefore, Graphnet submits that the public interest fully supports a grant of the proposal herein. Based on independent analyses and on its own experience, Graphnet has established both that there is a significant unserved need within the business community for the specialized service it here proposes to offer, and that the availability of its service will expand total business communications usage. To the extent that existing carriers do not presently provide the highly specialized type of services Graphnet contemplates, authorization of this system will not only help meet existing demand presently unattended, but will as well develop new markets for those business communications services proposed here, motivate further innovation by all carriers, enlarge the market for facsimile and related equipment, and increase the ability of industry as a whole to respond to the needs of business communications users.

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
(202) 296-1600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH H. KITTNER
ROBERT W. COLL
THOMAS N. FROHOCK
CARL R. RAMEY
EDWARD P. TAPTICH
NORMAN P. LEVENTHAL
JAMES R. COOKE
STEVEN A. LERMAN
VIRGINIA S. CARSON
JOHN J. SMITH

February 18, 1976

The Honorable Richard E. Wiley
Chairman
Federal Communications Commission
Washington, D. C. 20554

Dear Chairman Wiley:

As you know, Graphnet Systems, Inc., was authorized by the Commission in 1974 to provide certain "value-added" common carrier services. Utilizing sophisticated computer controls, the system approved employs store-and-forward, packet-switching technology to provide new and innovative data and facsimile record communication services. In granting Graphnet's proposal, the Commission noted that Graphnet "will provide a facsimile service of significantly higher quality than that now offered by existing carriers." 44 F.C.C.2d at 802. And the Commission specifically acknowledged "an obligation to make available to the public this new development and improvement in communications service." Id. at 801.

Graphnet was the first of the "value-added" carriers to initiate operations, and has offered its services since January of 1975. It has diligently pursued the development and phased deployment of its network. It has expended substantial resources on establishing and refining both hardware and software essential to an effective provision of the unique services involved. And it has aggressively sought to market its services in the competitive environment which the Commission determined to foster.

In all respects, therefore, Graphnet has devoted itself fully to achieving what it proposed, and to promoting the objectives which the Commission articulated in establishing this new value-added carrier field. The results to date are encouraging. The advantages which Graphnet's innovative system offers -- reliability, speed, cost-effectiveness and flexibility of service -- are being increasingly recognized. Graphnet's subscriber base has grown steadily. And existing customer use of the system continues to expand. In short, all marketplace indications to date confirm the Commission's earlier public interest determination.

Today, Graphnet has proposed to extend the availability of its services. In an application being filed simultaneously herewith, Graphnet has requested Commission authority to permit subscribers to communicate with facsimile terminals located in eleven Western European countries -- Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany. If approved, the proposal would permit, for the first time, efficient, cost-effective communications between and among the more than 125,000 facsimile terminals on both continents. Moreover, and again for the first time, communications between those facsimile units and some 500,000 telex-type terminals in the United States and Western Europe would be made possible. Both the demand for, and technical feasibility of, such capabilities have been reinforced by Graphnet's experience domestically. And beyond the indications of interest Graphnet has received directly, the rapidly accelerating pace of international commerce itself attests the need for such a transatlantic communications alternative.

In the past, as a matter of seeming reflex, the United States international record carriers have objected to the introduction of any new international service not their own. And with an unfortunate predictability, it can be expected that the IRC's will seek to block favorable Commission action on Graphnet's proposal here. Delays will be sought. Contentions of drastic economic impact will be made. Assertions of geographic exclusivity will be advanced. And public interest detriments yet unimagined will likely be paraded before the Commission.

Yet there is no public interest reason why the Commission must be mired in such claims. Nor should the Commission in this new service area tolerate the traditional IRC tactics of delay and obstruction. For the proposal here is limited and straightforward. It is simply to permit communication between United States terminal devices and facsimile terminals in the Western European countries specified. As such, the service is no more than the Commission has already authorized Graphnet to provide domestically. Only the geographic area within which receiving facsimile devices may be located will be altered. Graphnet does not seek any exclusivity or protected position; it merely seeks to provide presently unavailable services for which a clear need exists. And the public interest benefits on which the earlier grant to Graphnet was based are squarely applicable here.

Fundamentally, the Commission must recognize that the protracted delay and litigation the IRC's will undoubtedly urge here will directly impede the public interest. Most of the service capabilities outlined in the application are available now. Every unnecessary delay merely denies for that period a needed communications alternative which could -- and would -- be employed by users. Moreover, use of the Commission's processes as a competitive weapon by the IRC's can have a debilitating impact on entities like Graphnet -- with the public the ultimate loser. Graphnet is a small company with limited resources. Each hour and each dollar expended on unwarranted litigation is an hour and a dollar diverted from system development and marketing efforts. And unlike the traditional carriers, Graphnet has no rate base into which the expenditure of such resources can be plowed, with a guarantee of recovery later through subscriber charges. In short, Graphnet can be bled dry by a course of delay and protracted contention. And in the meantime, needed services remain unprovided.

As you well know, in recent months, the Commission has been the object of criticism -- much of it undeserved -- because of inaction and delay in certain of its areas of regulation. The proposal filed by Graphnet today offers an opportunity to confirm the Commission's ability to act with insight and expedition where public benefits are clear, and objections merely self-serving. To the extent that Graphnet's proposal represents one of the most significant improvements in transatlantic record communications in recent years -- one which can be promptly implemented -- it is earnestly urged that early action on the application be taken.

Very truly yours,

Ed Taptich

Edward P. Taptich

Counsel for Graphnet Systems, Inc.

LAW OFFICES
MCKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

(202) 296-1600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS N. FROHOCK
CARL R. RAMEY
EDWARD P. TAPTICH
NORMAN P. LEVENTHAL
JAMES R. COOKE
STEVEN A. LERMAN
VIRGINIA S. CARSON
JOHN J. SMITH

April 1, 1976

Vincent J. Mullins
Secretary
Federal Communications Commission
Washington, D. C. 20554

Re: Graphnet Systems, Inc.
Application filed February 18, 1976, for authority to permit subscribers to use its facsimile services to communicate with terminal devices in 11 European countries.

Dear Mr. Mullins:

On February 18, 1976, the referenced application was filed by Graphnet Systems, Inc. Transmitted herewith, on behalf of Graphnet, are an original and three copies of an amendment to that application.

If there are questions concerning these matters, or if further information is desired, please communicate with this office.

Very truly yours,

Edward P. Taptich

Edward P. Taptich

Enclosure

GRAPHNET Graphnet Systems, Inc.

99 West Sheffield Avenue Englewood, N.J. 07631 Phone [illegible]

AMENDMENT

On February 18, 1976, Graphnet Systems, Inc., filed an application with the Federal Communications Commission, requesting authority to permit subscribers to use its facsimile services to communicate with terminal devices in 11 European countries. At page 4 of that application, it was stated as follows:

> As with its present service offerings, Graphnet will employ necessary communication channels leased from existing carriers at tariffed rates. While Graphnet anticipates initially using the facilities of AT&T under its Tariff 263, other carrier facilities and services may be employed in the future, as customer needs, traffic volumes and other carrier requirements dictate.

Against that background, page 6, paragraph 5, of the application is hereby amended to include the following additional information:

In the event that forthcoming revisions to AT&T's Tariff F.C.C. No. 263, permitting the use of those services for the purposes proposed herein, are not yet filed and effective at the time of Commission action on this application, Graphnet anticipates utilizing the facilities and services of Communications Satellite Corporation, in accord with its Tariff F.C.C. No. 9, pursuant to specific arrangements to be agreed on with

Comsat. Graphnet anticipates that any such specific arrangements would be submitted to the Commission for approval. Accordingly, Graphnet would accept a grant of this application conditioned on the requirement that Graphnet obtain prior Commission approval of its final arrangement with Comsat before instituting the services proposed herein.

Utilization of Comsat facilities would work no substantial change in the remainder of the application information submitted February 18, 1976. In fact, such modifications as might result would simply tend to reduce anticipated costs, and permit appropriate reductions in charges for the services proposed.

GRAPHNET SYSTEMS, INC.

By Barry Yampol
Barry Yampol
President

April 1, 1976

April 30, 1976

9420

McKenna, Wilkinson & Kittner
1150 17th Street, N.W.
Washington, D. C. 20036

Attention: Edward P. Taptich, Esq.

Gentlemen:

This is in reference to the application of Graphnet Systems, Inc. (Graphnet) filed February 13, 1975 and the amendment to the application filed April 1, 1976, for authority under Section 214 of the Communications Act to permit communications by Graphnet Subscribers with addressee facsimile terminal locations in Belgium, Denmark, France, Italy, the Netherlands, Norway, Spain, Switzerland, the United Kingdom and West Germany.

In its initial filing Graphnet states that it anticipates using the overseas message telephone service facilities of the American Telephone and Telegraph Company (AT&T) pursuant to AT&T's Tariff No. 263 and that as carrier requirements dictate, Graphnet will employ the necessary communication channels leased from existing carriers at tariffed rates. In the April 1st amendment Graphnet states that in the event revisions to AT&T Tariff No. 263 are not yet filed and effective at the time of Commission action on its application, it will utilize the facilities and services of Communications Satellite Corporation (Comsat) pursuant to Comsat's Tariff No. 9.

As indicated by the April 1st amendment, Graphnet apparently recognizes that AT&T Tariff No. 263 does not permit the direct electrical connection of customer provided data transmitting and/or receiving equipment with its facilities for use with AT&T's long distance message service between points in the United States and the overseas points listed in the application. As the proposed service could not be offered pursuant to the AT&T tariff the application proposing the use of AT&T facilities would be defective and unacceptable for filing. The April 1st filing amending the application to propose the utilization of Comsat facilities for the provision of Graphnet's facsimile service to overseas points, in lieu of the use of AT&T facilities, removed this deficiency. However, a careful review of the amended application indicates that it is deficient in that it fails to include information required by §63.01 of the Commission's Rules necessary to accomplish the preliminary processing of the application.

Accordingly, it is requested that the following information be submitted:

(a) Describe the structure and operation of the proposed communication system utilizing the leased satellite circuits;

(b) Indicate what terrestrial facilities will be required to interconnect the satellite circuits with Graphnet's existing network;

(c) Indicate whether Graphnet proposes to lease only circuits in the satellite uplink or whether Graphnet would lease both uplink and downlink satellite circuits;

(d) Specify the number of channels Graphnet proposes to provide between the United States and each of the overseas points it proposes to serve;

(e) Indicate what relationships, if any, the proposed operation would require Graphnet to establish with specific foreign entities; and

(f) Provide detailed information as to the estimated revenues and costs which would be associated with the proposed service.

In its February 13th application, Graphnet requests a waiver of the provisions of §63.01 of the Commission's Rules to the extent the provisions contained therein are inapplicable or inappropriate because of the nature of the proposed service. However, the provisions of §63.01 as previously noted are applicable to the proposed operation of Graphnet and the Graphnet request for waiver IS HEREBY DENIED.

The requested information should be furnished as an amendment to the application. If such amendment is not received within 30 days of the date of this letter, the application may be deemed defective and returned as unacceptable for filing.

Sincerely yours,

Walter R. Hinchman
Chief, Common Carrier Bureau

Telenet Communications Corporation 1666 K Street N.W. Washington, D.C. 20006 (202) 785-8444

Lawrence G. Roberts
President

May 4, 1976

Honorable Richard E. Wiley
Chairman
Federal Communications Commission
Washington, DC 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond

My Dear Mr. Chairman:

Enclosed is a copy of an application which is being filed today by Telenet Communications Corporation, seeking Commission authorization to establish a public packet-switched data communications service between the Continental United States and the United Kingdom. As you are aware, Telenet Communications Corporation currently offers a domestic public packet-switched data communications service, pursuant to authority granted April 16, 1974 (46 FCC2d 680).

As detailed in Telenet's October 1973 application for domestic authority (File No. P-C-8750), "packet-switching" is a computer-based technology involving a network of minicomputers which are interconnected by high-speed transmission facilities and which have been programmed to perform sophisticated switching, interfacing, and error control functions. Data enters the network through one of these minicomputers (either through dial-in or leased access ports), where it is subdivided into "packets" each of which contains the destination address and error control information. Each packet is individually routed through the network over the optimum (least delay) path existing at that moment; the packets are reassembled in their original order at the destination minicomputer and are delivered to the addressee.

a subsidiary of Bolt Beranek and Newman Inc.

No physical end-to-end connection between the sender and receiver is created; rather, a "virtual" connection is established and, as perceived by the user, transmission through the network is essentially instantaneous.

Telenet's domestic service was instituted in August 1975, and has been well received by data communications users. As a result, Telenet is expanding its domestic network more rapidly than had originally been projected. Telenet Central Offices are currently located in 24 U.S. cities, and approximately 50 customer "host" computers, each serving up to hundreds of terminals nationwide, are currently connected to the network.

The application submitted herewith reflects the expression of a public need by both existing and prospective domestic customers of Telenet for access to the United Kingdom; as well as a concurrent need expressed by the British Post Office, on behalf of data communications users in the United Kingdom, for access to the United States market.

At the present time, the computer user is deterred from engaging in overseas data communications by a number of constraints, chief among which are the high cost and low quality of existing international services. As explained in the enclosed Application, the availability of packet-switching technology for international communications substantially removes both of these constraints: through powerful error-detection methods, qualitative defects in transmission facilities effectively disappear; and because of the extremely efficient use which packet-switching makes of transmission facilities, the cost to the user can be significantly reduced.

In addition to these obvious direct benefits which would flow from the early establishment of such a service, there exist other benefits which, while less direct, are of at least equal benefit to the public interest. For example, in the United States there are a number of different and unique data bases resident on remote-access computer systems, access to which on a real-time basis is dependent in large part upon the availability of high quality and inexpensive communications facilities. While Telenet's domestic network has facilitated the broader use of such data bases within the continental United States, these national resources are of great potential interest abroad, but for the reasons noted above it has not been feasible to market them outside of the United States.

As the Commission is undoubtedly aware, the implementation of international packet-switching facilities has been the subject of numerous international meetings and conferences in recent months. In March 1976, Study Group VII of the CCITT recognized public packet-switching services as among the internationally approved classes of public data network services, and adopted a standard interface protocol for the connection of users' host computers to public packet networks. This protocol also forms the basis for the interconnection of public packet networks across national boundaries. Many European countries, in addition to the United Kingdom, are in the process of implementing their own national packet-switched networks, and it is believed that their interconnection into multi-national networks will follow shortly.

The instant application affords this Commission the opportunity to authorize the world's first international public packet-switching service. We urge its prompt approval.

Very truly yours,

Lawrence G. Roberts

Lawrence G. Roberts

LGR/caf
Enclosure

cc: Commissioner Robert E. Lee
Commissioner Charlotte T. Reid
Commissioner Benjamin L. Hooks
Commissioner James H. Quello
Commissioner Glen O. Robinson, Jr.
Commissioner Abbott M. Washburn
Honorable Walter R. Hinchman

MAY 5 1976

Telenet **Communications Corporation** 1666 K Street N.W. Washington, D.C. 20006 (202) 785-8444

Philip M. Walker
Vice President &
General Counsel

May 4, 1976

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
Washington, DC 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond

Dear Mr. Mullins:

Telenet Communications Corporation submits herewith an original and nine copies of its application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, and Part 63 of the Commission's Rules, for authority to extend its public packet-switched data communications service from the Continental United States to the United Kingdom and points beyond. Also enclosed is Telenet's check in the amount of $45.00, in payment of the requisite filing fee.

This application involves the proposed lease of terrestrial and satellite circuits from other carriers, and thus no major environmental action, within the contemplation of Section 1.135 of the Commission's Rules, is involved.

Please address any inquiries concerning the enclosed application to the undersigned.

Very truly yours,

Philip M Walker

Philip M. Walker

PMW/caf
Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION)
)
)
Application for Authority to) File No. ____________
Extend Packet-Switched Data)
Communications Service from)
the Continental United States)
to the United Kingdom and Points)
Beyond)

APPLICATION

Respectfully submitted,

TELENET COMMUNICATIONS CORPORATION
1050 17th Street, N.W.
Washington, D.C. 20036

by Lawrence G. Roberts, President

May 4, 1976

TABLE OF CONTENTS

I. INTRODUCTION. 1

II. SECTION 63.01 INFORMATION 3

III. THE PROPOSED SYSTEM AND SERVICE 7

- A. Introduction. 7
- B. The Proposed System Configuration 8
- C. The Proposed Service Offering 12
- D. Proposed Tariff Charges and Regulations 16

IV. PUBLIC NEED 17

- A. The Worldwide Emergence of Public Packet-Switching Networks 17
- B. The Applicability of Packet Switching for Overseas Data Communications. 22
- C. The Economic Infeasibility of Existing Overseas Services for the Average User. 28
- D. Benefits of the Proposed Service. 34

V. ECONOMIC JUSTIFICATION. 40

- A. Market and Revenue Projections. 42
- B. Capital and Operating Costs 43

EXHIBIT A - BPO/Telenet Correspondence

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of TELENET COMMUNICATIONS CORPORATION Application for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond	)	File No. ___________

APPLICATION

Telenet Communications Corporation hereby requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, and Part 63 of the Commission's Rules, to extend its public packet-switched data communications service from the Continental United States, where the applicant currently offers such service pursuant to authority granted April 16, 1974 (File No. P-C-8750), as amended and supplemented, to the United Kingdom. To the extent that such authority may be necessary, Telenet also requests authority to offer such service between the United States and other overseas points via interconnections which are expected to be established between such points and the United Kingdom.

I. INTRODUCTION

At the present time, Telenet is the only common carrier offering a public packet-switched data communications service in the United States. This service began on August 16, 1975, pursuant to Telenet's Tariff F.C.C. No. 1. No such service is currently offered to the public for international communications between the United States and any overseas location, including the United Kingdom. The packet-switching technology employed by Telenet, and its advantages to the data communications users, are detailed in Telenet's original application for domestic common carrier authority (File No. P-C-8750) and in Sections III and IV below. In brief, these advantages include:

- Public switched service;
- Rapid response time;
- High reliability;
- Charges proportional to traffic volume;
- Very low error-rate;
- Dynamic allocation of transmission capacity;
- Full interconnection of many sites;
- Capability for heterogeneous computers and terminals to communicate; and
- Non-disruptive expansion.

In the marketing of its domestic data communications service, Telenet has discerned a strong recurring interest expressed by both existing and potential Telenet customers in the availability of an international packet-switched service between the United States and the United Kingdom (as well as between the United States and other countries). Comparable interest has been expressed to the British Post

Office (BPO) by entities located in the United Kingdom with a need for rapid error-free data communications to the United States at affordable rates. Additionally, the members of the CCITT have recognized packet-switched data communications service as one of the classes of service 'appropriate' for national and international public data networks.[1] While the ultimate size of the market for packet-switched data communications service between the United States and the United Kingdom cannot be accurately predicted, Telenet's market studies indicate that the use of the service will be substantial, as discussed in Sections IV and V.

II. SECTION 63.01 INFORMATION

In accordance with Section 63.01 of the Commission's Rules and Regulations, Telenet furnishes the following information in support of this Application:

1) Telenet is a corporation organized and existing under the laws of the State of Delaware. It has its principal place of business at 1050 17th Street, N.W., Washington, D.C. 20036.

2) Correspondence concerning this Application may be addressed to:

Philip M. Walker
Vice President and General Counsel
Telenet Communications Corporation
1050 17th Street, N.W.
Washington, D.C. 20036

---

[1] CCITT Study Group VII, International User Classes of Service in Public Data Networks, Recommendation X.1, Geneva, March 1976.

3) Telenet is a communications common carrier subject to Section 214 of the Communications Act of 1934, as amended, and upon the grant of the instant Application will become an authorized carrier as defined in Section 103(7) of the Communications Satellite Act of 1962.

4) The facilities covered by this Application will be used to extend service into territory at present not directly served by the applicant. Such facilities will be used for packet-switched data communications service.

5) The proposed facilities are to be located between Telenet's Central Offices in Washington, D.C. and Boston, Massachusetts and two Atlantic communications satellites, to be interconnected with matching facilities between the satellites and the United Kingdom.

6) Telenet has no existing facilities between these points.

7) The facilities for which authorization is hereby requested are specified in Section III.B hereof.

8) The proposed facilities are sufficient to meet Telenet's present communications channel requirements between the U.S. and the U.K.; additional facilities will be required as public usage of the proposed packet-switched data communications service increases, but such additional channel requirements cannot be accurately estimated at this time.

9) The route and technical details of the proposed facilities are a matter of record before the Commission. Should additional information be requested, Telenet will endeavor to provide same.

10) The proposed facilities will be obtained under lease from Comsat and AT&T, respectively, under their appropriate tariffs. Based upon current tariff rates, costs for such facilities would be as follows:

(a) Two 50,000 bps satellite half-circuits, $5,500 per month (total).

(b) Two 50,000 bps terrestrial circuits (AT&T Series 8000):

Andover-Boston (160 airline miles)	$3,512	
Etam-Washington (145 airline miles)	3,269	
TOTAL	$6,781	per month

(Plus $864 total non-recurring installation charges.)

(c) Two interim 9,600 bps satellite half-circuits, $5,700 per month (total).

(d) Two interim 9,600 bps terrestrial circuits, AT&T Series 3000), $1,407 per month plus $975 non-recurring installation charges (total).

In the event that Comsat's proposed DIGISAT service, for which an application is presently pending before the Commission (File No. I-P-C-7901-8), is available in the relevant time frame, the monthly cost of the interim 9,600 bps satellite half-circuits would be reduced from $5,700 to $3,840.

11) The BPO has agreed to furnish and operate matching facilities between the United Kingdom and the Atlantic communications satellites, which will connect with those to be furnished by Telenet. Exhibit A hereto contains a letter from the BPO dated April 21, 1976, indicating its intent to this effect, and Telenet's reply, dated April 30, 1976.

12) The factors showing the public need for the proposed facilities are discussed in Section IV of this Application.

13) Economic justification for the proposed project, including a projection of revenues and costs, is contained in Section V hereof.

14) To the best of Telenet's knowledge, no carrier presently renders, between these points, a public packet-switched data communications service. The only packet-switched service between the U.S. and the U.K. offered or proposed by any carrier is the experimental service offered by Western Union International (WUI) pursuant to its Tariff F.C.C. No. 4 for the sole use of the Advanced Research Projects Agency (ARPA) of the U. S. Department of Defense, on a two-year trial basis. Such WUI service is provided for the purpose of experimentation with multiple-access satellite communications technology; it is not available to members of the general public, and it does not satisfy the public needs identified herein.

15). Proposed tariff charges for the service are stated in Section III.D hereof. To the extent applicable, it is anticipated that the regulations contained in Telenet's Tariff F.C.C. No. 1, presently on file with the Commission, will govern the service herein proposed.

16) Pursuant to advice of the Commission's staff, Section 63.01 (p) of the Rules is believed to be inapplicable to this Application.

III. THE PROPOSED SYSTEM AND SERVICE

A. Introduction

In August 1975, Telenet Communications Corporation inaugurated its public packet-switched data communications service, offering nationwide service from network access and switching centers (called Telenet Central Offices, or TCOs) in seven cities. As demand has grown, Telenet has continued to expand the number of TCOs and presently operates 24 such offices providing nationwide data communications service for approximately 50 host computer systems, each using the network to communicate with up to hundreds of remote terminals across the country.

As the network has expanded, computer and terminal users in other countries have indicated an interest in connecting to it, in order to obtain reliable and economic access to a variety of similar resources in the United States. Likewise, such users in the United States have indicated a requirement to obtain corresponding access to systems in other countries.

In response to these expressed requirements of its present and prospective customers, Telenet herein proposes to establish and operate, in conjunction with the British Post Office, an extension of its public packet-switching network service between the United States and the United Kingdom.

As discussed in Section IV ("Public Need"), packet-switching technology is particularly appropriate for use in overseas data communications, since it uses the very costly transmission channels extremely efficiently. Moreover, packet-switching offers a means of overcoming many of the incompatibilities and differences in national standards among data communications systems and devices in the U.S., the United Kingdom, and in other countries.

The following paragraphs describe in more detail the proposed facilities and the jointly furnished service offering.

B. The Proposed System Configuration

The facilities initially used to furnish the proposed U.S. - U.K. data communications service would include packet-switching computer equipment located in Telenet Central Offices (TCOs) at Boston, Massachusetts and at Washington, D.C., interconnected by means of point-to-point satellite channels to functionally similar packet-switching equipment installed and operated by the BPO at a BPO site in London, England. Two Telenet packet-switching centers would be linked to the overseas site in order to maximize reliability, minimize domestic network costs, and minimize end-to-end packet transit delay.[2/]

[2/] Unlike existing overseas telegraph circuits where all wideband cable or satellite facilities have to be broken down into individual user circuits and where a large investment in channel derivation and terminating equipment is necessary in order to interconnect international facilities with domestic facilities (which is ordinarily

The Boston TCO would send/receive traffic for the Northeastern part of the U.S., and other areas as well, while the Washington, D.C. TCO would provide direct overseas access for the Southeastern U.S. and other areas of the country. In the event of a failure at either TCO (very unlikely due to the use of redundant equipment at each TCO) traffic would automatically be routed to the other. Access to these overseas facilities would be provided through Telenet's domestic network.

Transmission facilities for which authorization is requested in the present application consist of:

1. One high-speed data channel between the Etam, West Virginia, earth station and the "Primary"

2/ cont'd.
performed at a small number of "gateway" locations), interconnected packet-switching networks do not require channel derivation or termination equipment for other than the wideband trunk circuits, since they are interconnected at a higher level than that of individual subscriber channels. Moreover, large-scale packet-switching networks are by design "distributed" networks, utilizing as many paths between major nodes as practical. For example, within Telenet's domestic network, at least three totally independent paths exist between all pairs of Class 1 TCOs (see Figure 1). For these reasons, and for the purpose of minimizing the number of "hops" over which packets must travel (end-to-end transit delay is largely a function of the number of hops), network performance is enhanced in terms of response time and reliability, and cost is reduced, if multiple packet switching centers are interconnected to overseas points. Initially, Telenet proposes two such interconnections to England, but a third direct link from New York City may be required at a future date.

The interconnection of public packet networks at the trunk level, with interconnections established between multiple exchanges, is therefore analogous to the interconnection of public telephone systems around the world.

Atlantic Intelsat communications satellite, and one high-speed data channel between the Andover, Maine, earth station and the "Major Path" Atlantic Intelsat communications satellite, both channels to be interconnected by the BPO with matching facilities between said satellites and the United Kingdom. Each such high-speed channel shall accommodate the transmission and reception of synchronous signals at data rates of 50,000 bps via a single-channel-per-carrier (SCPC) facility;[3] and

2. Connecting terrestrial facilities of comparable bandwidth between the Etam earth station and Telenet's Central Office in Washington, D.C., and between the Andover earth station and Telenet's Central Office in Boston, Massachusetts.

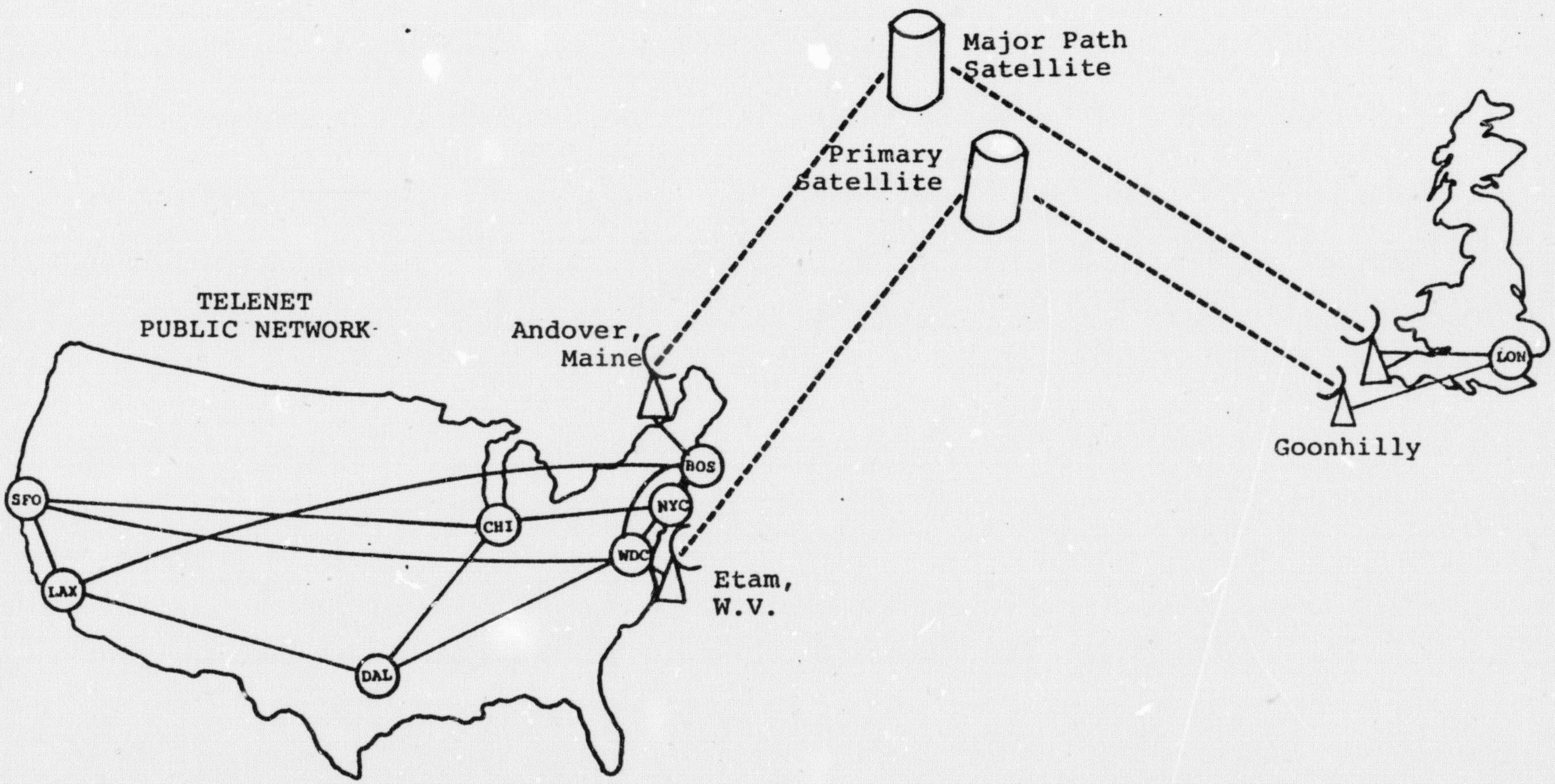
It is Telenet's intention to utilize initially, on an interim basis, a circuit operating at 9,600 bps on each of the specified routes, in lieu of the aforementioned 50,000 bps circuits. Such 9,600 bps circuits would be upgraded to 50,000 bps capacity as soon as traffic volume warrants such additional capacity, which is expected to occur within six months following the commencement of service.

Figure 1 illustrates the proposed initial system configuration.

3/ At present, 50,000 bps satellite channels are available only from Etam. However, Telenet has been advised by Comsat that such service is planned to be available from Andover by the third quarter of 1976, well before it will be needed by Telenet.

Figure 1.

Initial System Configuration


Major Path
Satellite
Primary
Satellite
TELENET
PUBLIC NETWORK
Andover,
Maine
Etam,
W.V.
Goonhilly
SFO
LAX
CHI
DAL
BOS
NYC
WDC
LON

For diagrammatic simplicity, only
Telenet Class 1 Central Offices
are shown.

C. The Proposed Service Offering

The U.S. - U.K. packet-switched data communications service which Telenet herein proposes to offer jointly with the British Post Office is a fundamentally new overseas service, unlike any existing overseas data communications service in terms of technology, functional performance, and pricing structure. In accordance with the recommendations of CCITT Study Group VII, the proposed packet-switched data communications service is based upon the logical mechanism of a "virtual connection,"[4/] wherein a user may establish either a temporary or permanent virtual connection (as opposed to a physical connection) between source and destination. Data transfer is physically accomplished through the very rapid and efficient storing and forwarding of short data segments called "packets." As noted above, access to the proposed overseas service offering would be provided through Telenet's domestic network.

The proposed offering provides three basic classes of service, in accord with Recommendation X.1[5/] of CCITT Study Group VII. For computers and computer-like devices, the packet-mode class of service (access) will be offered,

---

[4/] A virtual connection is defined as an apparent communication channel between two stations, whereby information or data transmitted by one station is automatically routed through the network to the other station. No long haul capacity is pre-assigned to a virtual connection; rather, capacity is made available only as data is transmitted by the stations.

[5/] Recommendations X.1, X.2, and X.25 are discussed further at pp. 20-21 *infra*.

with access speeds of 2400, 4800, 9600 bps and wideband (48,000 to 56,000 bps). Address selection and call progress signals for packet-mode subscriber devices will be in accordance with CCITT Study Group VII Recommendation X.25.

For non-programmable devices (i.e., most data terminals today) asynchronous classes of service will be offered at 0-300 bps and 1200 bps; synchronous classes of service at 2400, 4800, 9600 bps and wideband.

In accord with CCITT Study Group VII Recommendation X.2, the proposed international service offering will include the following user facilities, all of which are presently a part of Telenet's domestic network service:

1. Permanent virtual circuit. Defined as an essential user facility by CCITT Study Group VII, a permanent virtual connection provides the user a dedicated end-to-end logical channel, with essentially error-free performance at a fixed monthly cost which consists only of local access line and port charges. Traffic charges also apply and are based upon the volume of data transmitted across the virtual connection.

2. Virtual call. Defined as an essential user facility by CCITT Study Group VII, a virtual call is a virtual connection which may be established and terminated upon demand by the user through the use of specified call progress signals from his station.

Charging structure is similar to that for virtual circuits (see Section III.D below).

3. Closed user group. Defined as an essential user facility by CCITT Study Group VII, a closed user group is a facility for limiting access to/from a specified set of user stations.

The nature and features of the proposed service offering may be seen by contrast with existing overseas services. As discussed in Section IV.C, there are basically two types of service presently available between the U.S. and the U.K. -- leased channel and circuit-switched service. Both types of service provide the user with a dedicated end-to-end physical channel (for the duration of the call, in the case of a circuit-switched connection) of a fixed transmission speed. Charges are therefore based upon the distance and the time (call duration) the physical channel is assigned. The devices at the ends of the circuit may utilize any logical communications protocol across the circuit, so long as the two devices both utilize precisely the same protocol, operate at the same transmission speed, operate in the same mode (half-duplex or full-duplex), and utilize the same character code.

The proposed packet-switching service is unlike these conventional service offerings in the following important respects:

First, the sender does not establish an end-to-end physical link with the receiver. Rather, each party obtains a separate physical link (a leased or dial circuit) between his computer or terminal device and a local "port" (circuit termination equipment) at the nearest node of his domestic packet network. The source and destination devices may each utilize different communication protocols for the network access link, operate at different transmission speeds, and operate in different modes (half-duplex or full-duplex); each packet network performs the necessary protocol, speed, and mode conversions.

Secondly, for end-to-end communication between domestic or international points the user establishes a virtual connection, as noted above, through the network between his device (source) and the remote device (destination) with which he wishes to communicate. Rather than tying up a physical circuit end-to-end, which is highly uneconomic for typical data transmissions (which are "bursty"), long haul transmission capacity is allocated only when data is actually sent. It is therefore practical to base charges primarily upon the amount of data sent, rather than call duration.

For domestic traffic the virtual connection is between two domestic network ports and the packets of data are charged at the domestic packet rate. If the call is to a foreign address, the virtual connection is simply established via an interconnecting circuit between the domestic packet network and its foreign counterpart, to the destination port in the foreign network. In this case, the user is charged the international packet rate specified for the particular foreign country.

D. Proposed Tariff Charges and Regulations.

The following tariff rates are contemplated for international traffic between Telenet's domestic network and the United Kingdom:

1. Traffic will be charged at the rate of $10.00 per kilopacket (one cent per packet) where each kilopacket consists of 1,000 packets. The maximum length of each packet is 1,024 bits of customer data (128 eight-bit characters). This charge covers end-to-end transmission between any point on Telenet's U.S. network and the United Kingdom, and is based upon the accounting rate of $9.00 per kilopacket which has been jointly agreed upon between the BPO and Telenet (see Exhibit A hereto).

2. A minimum packet charge will apply for each virtual connection, equal to the greater of:

(a) $1.00, or

(b) $3.00 per hour, but not more than $200.00 per month.

Except for the above packet charges, all provisions of Telenet Tariff F.C.C. No. 1, presently on file with the Commission, will apply to the proposed service.. In particular, the charges in said tariff for network access ports and equipment and for access channels in the U.S. will apply, and such access facilities may be utilized by the customer for both domestic and international communications. Charges for network access in the United Kingdom will be established by the BPO.

IV. PUBLIC NEED

A. The Worldwide Emergence of Public Packet-Switching Networks

It is widely recognized that data communications is becoming an increasingly important part of the industrial and social infrastructure in today's information-oriented society. Market studies in the United States, in Europe, and in other areas of the world consistently project a 20 to 30 percent annual rate of increase in the population of computer terminals from an already large base, thus pointing to the growing need for suitable data transmission facilities and services.[6/] This growth is being driven in part by rapidly declining costs for computing equipment, data storage devices, and data terminals and in part by user requirements (1) for accessing central computer facilities with unique data banks and programs, (2) for centrally controlling geographically

---

[6/] A representative of AT&T recently stated that U.S. expenditures for data communications (transmission, communications processing, and media conversion) would exceed U.S. expenditures for data processing by 1980, and that for many large corporations data communications expenditures would also exceed expenditures for voice communications sometime during the 1980's. Edward A. Collyer, speech before the American Institute of Industrial Engineers (AIIE), Federal Government Data Systems Conference, Washington, D.C., April 7, 1976.

dispersed company operations, (3) for accurate source data entry of sales and production information, and (4) for rapidly transferring administrative traffic among company locations.

In order to satisfy the growing requirement for suitable data communications facilities and services, telecommunications organizations in the leading industrialized countries have determined that public packet-switched data communications networks are necessary in their respective countries, and that such networks should be interconnected in order to make this service available internationally. Telecommunications organizations outside of the United States that are currently implementing or operating national and multi-national public packet networks include the following:

1. The British Post Office has installed and is currently testing its Experimental Packet-Switching System (EPSS), which is intended to evolve into a full-fledged public network. The initially installed facilities are already fully committed to various British banks, manufacturing firms, government agencies, computer service bureaus, and research and educational organizations.

2. The French Postal, Telephone and Telegraph Administration recently awarded a contract to a French consortium for the implementation of a public packet-switching network, called TRANSPAC, for France. The TRANSPAC network is scheduled to go into service in 1978 and will initially support an estimated 1500 users.

3. For several years, the Spanish National Telephone Company, CTNE, has been operating a packet-type data communications network for a limited user community. The network has been growing steadily and is expected to furnish public communications service for more than 5,000 terminals throughout the Spanish provinces by 1978.

4. The Trans-Canada Telephone System has installed and is currently testing a public packet-switching network for Canada called DATAPAC. The DATAPAC network is scheduled to go into commercial service later this year.

5. Canadian National/Canadian Pacific Telecommunications (CN/CPT) has announced plans to build a second public packet-switching network in Canada called the INFOSWITCH network.

6. The Japanese telephone company, Nippon Telephone and Telegraph Corporation, has also developed a prototype for a public packet-switching network which is intended to go into commercial operation in the late 1970s.

7. PTT's in nine European Common Market countries have jointly agreed to proceed with the implementation of a multi-national European packet-switching network called EURONET. Initially to be operated as a private network, beginning in 1977, it is chartered to permit

provision of public communication services at a future date.

Similarly, within the United States the F.C.C. has previously concluded that public packet-switching services would serve the public convenience and necessity. In October 1973, Telenet submitted its Section 214 application to the Commission for authority to establish and operate the first public packet-switching netowrk in the United States. The Commission concluded that the proposed service was in the public interest and approved the initial application, as well as numerous subsequent Section 214 applications submitted by Telenet to extend its facilities and services to additional locations. Since inaugurating its nationwide service in August 1975, market response to Telenet's service has been stronger than anticipated, and the company has found it necessary to accelerate the planned rate of network expansion.

Moreover, the leading international telecommunications standards organization, the CCITT, has taken important steps in order to bring about the creation of international packet-switching network facilities and services. Specifically, in March 1976, Study Group VII of the CCITT, responsible for the establishment of worldwide standards for public data networks, adopted three significant recommendations: First, Recommendation X.1, which is concerned with the classes of public data network services offered internationally, was revised and now includes eleven classes of approved services -- two asynchronous, five synchronous, and four packet-mode services. (Telenet presently offers all four packet-mode classes of service, as well as the two asynchronous classes of service, in its domestic network and proposes to make these services as well as synchronous services, available between the United States and the United Kingdom, in accord with Recommendation X.1. See Section III.C, "Proposed Service Offering.")

Second, Recommendation X.2, which specifies those user facilities to be offered in public data networks, was adopted by Study Group VII and sets down both the essential and optional user facilities for public packet networks. (As discussed above, Telenet's domestic network and proposed overseas extension include all CCITT-specified essential packet network user facilities -- including permanent virtual circuits, closed user groups, and virtual calling.)

Third, CCITT Study Group VII reached international agreement on the detailed specifications for the call progress signals and the packet-mode interface protocol -- Recommendation X.25 -- to be utilized for the connection of computer equipment to public packet networks.

The implications of establishing these international standards are considerably more profound than might at first be obvious. The interface standard not only guarantees that all devices built to that standard will be able to connect to any public packet network (thus providing computer and terminal equipment manufacturers with the incentive to furnish X.25 interface facilities as an integral part of their products), but also guarantees that all public packet-switched data networks will support the same range of services and therefore be built in a uniform manner. Further, the X.25 interface also provides the basis for a standard means of interconnecting public packet networks. With public packet networks already committed in six of the leading industrialized nations, and with an internationally agreed-upon set of standards for user interfaces and network interconnections, it is quite likely that very rapid progress will take place toward a unified international packet switching capability during the next several years.

B. The Applicability of Packet Switching for Overseas Data Communications

All of the reasons why telecommunications operating organizations, regulatory agencies, and standards-making bodies have endorsed packet-switching as a major new public data communications service offering within national boundaries apply with equal or greater force in the international arena, and most particularly in overseas data communications, as proposed herein. The nature of these many advantages are discussed in detail in subsequent sections. In the immediately following paragraphs some features of packet-switching technology which make it particularly suitable for overseas data communications are described.

The nature of the packet-switching technology which Telenet utilizes in its network was described in detail in Section III and Exhibit A of Telenet's Section 214 applica- to the Commission, file number P-C-8750, dated October 9, 1973, which are incorporated herein by reference.

Briefly, Telenet's packet-switching network subdivides the data from individual subscribers into segments called "packets", which contain the destination address and control information; these packets are stored and forwarded rapidly through the network to the specified destination. Since each packet contains its destination address, it is possible to intermix over a single high-speed communications chennel the traffic of many different subscribers. Through this mechanism, Telenet is able to achieve very high utilization of its trunk transmission facilities (and a correspondingly low cost per unit of data sent), and is also able to base its charges for use upon the volume of traffic, independent of the distance that traffic travels.

Thus, packet switching achieves economies through efficient use of transmission facilities and is therefore most beneficial where transmission facilities are particularly costly, such as across the United States where a leased transmission line may cost several thousand dollars per month, or across the ocean, where a similar channel costs the user several times that amount. Consequently, the economic savings which packet-switching technology affords the user are even greater where costly overseas transmission facilities are involved than in a domestic network.

A second reason why packet-switching is particularly appropriate for the provision of international data services is the fact that a packet-switching network represents a "higher level" network which can be constructed utilizing underlying transmission technologies which may otherwise be incompatible. For example, the digital transmission systems that have evolved in the United States, in Canada, and in Europe each utilize different standards for synchronization, multiplexing hierarchies, and in some cases for electrical interfaces. Therefore, such digital transmission systems cannot readily be interconnected. (For example, despite its geographic proximity, the Canadian digital network, called Dataroute, is not today interconnected with AT&T's Dataphone Digital Service (DDS) network, primarily due to technical incompatibilities.) In contrast, the transmission facilities utilized within one part of a packet-switching network are totally independent of the facilities utilized within other portions of the network; i.e., each link may operate at different transmission speeds, utilizing different synchronization techniques and different electrical interfaces. And despite the disparate transmission facilities from which such a network is built, the end user may be furnished with a transparent end-to-end virtual connection.

A third reason why a packet-switching service is particularly appropriate in the international arena is the fact that packet-switching technology permits communications among devices which may be dissimilar -- i.e., devices which utilize different interfacing techniques; operate at different transmission speeds; and use different codes and protocols. While this is valuable within a domestic network, it is of particular value internationally since interface standards for terminal devices sometimes differ among countries. The following examples illustrate how a packet-switching network overcomes many of the incompatibilities among terminal and computer devices.

- A host computer in the United States may be connected to Telenet's packet-switching network by means of a digital transmission line (e.g., AT&T's DDS) operating at 9600 bits per second, utilizing a half-duplex synchronous network interface. A second host computer in the United Kingdom may be connected to the network by means of a 2400 bit per second analog channel, utilizing a full-duplex interface protocol. The packet network permits direct communication between these two host computers, by utilizing flow control techniques to accommodate the difference in transmission speeds, by supporting each interface protocol, and by providing the necessary transformations internal to the network.

- A customer station in the United States is connected to Telenet's network, conforming to U.S. data transmission standards for electrical interfaces. A customer device in the United Kingdom which conforms to British electrical interface standards not utilized within the United States is connected to the packet network in the U.K. Without necessitating any hardware or logical interface modification to either the customer device in the U.S. or in the U.K., communications between the two devices is possible through the packet-switched network. Connection of the devices through conventional communication facilities would require modifications such that both devices utilized identical electrical channel interface techniques, operated at the same transmission speed, and utilized a common transmission protocol. Even where it is practical for the devices at the remote ends of the channel to utilize common interfaces and protocols, the operational difficulty of testing and maintaining these physical end-to-end communication links across overseas channels is substantially greater than is the difficulty in testing and maintaining short-haul connections between a host or terminal device and a packet network facility located nearby.

A fourth reason why packet-switching is particularly appropriate for overseas data transmission is the high degree of reliability and accuracy required by computer-communication users and the ability of packet-switching systems to satisfy these requirements. Overseas communication facilities (trans-Atlantic submarine cables and communication satellites) are subject to service interruptions and noise causing data transmission errors -- due in part to the actual cables or satellites and in part to the large sequential collection of interconnecting equipment and lines required for each individual subscriber circuit. While restoration of service is usually accomplished rapidly through the alternate routing of circuits, these interruptions are, at best, an inconvenience to the user, and frequently represent a costly and serious problem for overseas data transmission.

In contrast, packet-switching systems of the type proposed herein incorporate multiple paths between switching nodes, automatic routing, and block error control; as a result, if errors occur on any trunk circuit, the system will automatically retransmit any data packets which may have been garbled or lost, and prevent the user from even becoming aware that link errors occurred. Likewise, if equipment or circuit outages occur, traffic can be automatically re-routed to alternate paths.

C. The Economic Infeasibility of Existing Overseas Services for the Average User

Submarine cables and communication satellites are presently utilized to furnish various leased channel and circuit-switched overseas communications services, which, although not originally designed for computer-oriented data transmission purposes, may nevertheless be used in such applications subject to certain limitations. The available overseas services between the U.S. and the U.K. which are on occasion used for some data transmission purposes are summarized in Figure 2 below, along with their approximate charges. The rates shown for leased channels are only for facilities from the U.S. gateway points (New York City and Washington, D. C.); access lines from the customer's premises to the nearest gateway would involve additional charges.

Figure 2.

Present Overseas Services Between U.S. and U.K.

Service Offering	Approximate Charge
Leased Channel Services:	
- Quarter-speed telegraph-grade (12.5 baud)	$1,528/month
- Half-speed telegraph-grade (25 baud)	$2,545/month
- Full-speed telegraph-grade channel (50 baud)	$3,600/month
- Alternate voice/data channel (300-9600 bps)	$9,657/month
- Wideband channel (50 kilobits per second)	$15,700/month

Figure 2. (cont'd.)

Service Offering	Approximate Charge
Circuit-Switched Services:	
- Telex telegraph-grade service (50 baud)	$153/hour
- Datel service (600-1200 bps)	$240/hour[7]
- Dataphone service (300-4800 bps)	$108/hour[7]

Two of the most common and rapidly growing classes of data communications applications are interactive time-sharing systems and fast-response transaction-oriented systems. As may be seen in the following sections, the presently-available overseas services are economically infeasible for the average user with these types of data communications applications, which stifles the growth of such computer/communication systems in the international arena.

1. Interactive Time-Sharing Systems

Interactive time-sharing systems are multi-user data processing systems with which each user, working from a keyboard terminal, may be simultaneously writing or executing his own computer program. Each user typically engages in a lengthy "conversation" with the remote computer (often called a session), while he is entering and testing his program or interacting with an already written program. Such conversations typically average 30 minutes in length and incur computer charges ranging from $10 to $50 per hour of use (depending upon the nature of the application program).

---

[7] Daytime rates.

If a terminal user in the U.K., for example, wishes to access and "converse" with a time-sharing computer in the U.S., in order to obtain access to a unique data base or interactive computer program, or simply to perform a computing task, he must utilize one of the communication services listed in the table above. If a circuit-switched service (Datel or Dataphone) is utilized, hourly communication costs would be between $108 and $240. Few interactive computer services in the U.S. or in the U.K. are so valuable that a user would be willing to incur a communications cost which is anywhere from twice up to twenty-five times the cost for the computer service being accessed.[8/]

In order to overcome the prohibitively high costs of the available overseas switched data communications services, a handful of the many hundreds of firms in the U.S. and the U.K. operating interactive systems have leased overseas circuits and installed computer concentrators at the end of the circuits remote from the central time-sharing computer. The concentrator is used to collect the traffic from a number of terminals and to transmit it over a single channel, taking advantage of the fact that

---

8/ In theory, it would be possible to use a circuit-switching service more efficiently by taking advantage of the fact that after each user input and computer response, there is typically a pause, during which time the user could hang up and re-dial later for the next input. However, as a practical matter the number of inputs in each session is such that dialing would be too frequent;

each user is only sending and receiving data for a small fraction of the time he is active.

To cost-justify a concentrator-type configuration a firm would require a substantial amount of total traffic -- many hundreds of terminal users and many thousands of active terminal-hours per month. Moreover, the firm would be forced to design, program, operate, and maintain those overseas concentrator facilities which it installed.

Neither the smaller commercial computer service organizations, nor even large corporations which operate their own internal time-sharing systems, have a sufficient number of users in any single overseas area to justify installation of concentrator facilities.[9]

---

[8] cont'd.
and additionally, most interactive systems require the user to step through a "log-in" procedure when connecting each time in order to ascertain user identity for billing and job control purposes. Therefore, even fast-connect circuit switched services with abbreviated dialing (which are not yet available between the U.S. and the U.K.) would not satisfy the data communication requirements of the interactive user. A wholly different type of communications service is required.

[9] Since no public communications service yet proposed (except this proposal) permits smaller computer service firms or private corporations any other economic possibility, the smaller service firms are unable to compete on a multinational basis with the large ones, and industrial corporations may be forced to use otherwise uneconomic computer services if they want to maintain the integrity of a common data base.

As a result of this situation, most commercial computer service systems, some of which possess data bases which are unique throughout the world, have been technically and economically inaccessible to overseas users. This is particularly unfortunate, since these computer facilities often go virtually unutilized in the evening hours, at precisely the time when the demand for such facilities in overseas locations (due to the five to eight hour time-zone difference) is at a peak.

In the case of the corporate data center, which has the capacity to provide computer services to domestic as well as overseas points, the communications costs are such that it is usually cheaper to establish a second data center across the Atlantic, rather than providing for remote access. In addition to the cost of duplicate computer facilities and personnel, the firm has the difficulty and expense of maintaining two sets of corporate records.

2. Transaction-Oriented Systems

Transaction systems are those application-oriented fast response systems which repetitively process a small set of transaction types -- i.e., order entry, credit checking, airline and hotel reservations, stock quotations, etc. -- accepting only particular input message formats and responding with particular output message formats.[10]

---

[10] Transaction systems are characterized by their diversity, and were in the past most frequently found in the service

While transaction systems vary widely in their applications, they exhibit certain common systems characteristics: First, they generally require rapid computer responses to terminal input. Second, they usually involve frequent and repetitive entry of transaction data. And, third, they usually involve access to a central corporate data base (containing information concerning inventory status, credit histories, aircraft seat availability, customers' orders in progress, etc.).

These system properties impose the following requirements on the communications systems utilized. First, the remote terminals must be linked to the central data base, preferably in real-time, in order to provide fast-response access to current data. Second, these links must be maintained on a continuing basis, since it would be very time consuming to require the terminal operator to "dial" a number each time he or she wished to enter a typically short transaction inquiry. For this reason, the vast majority of transaction systems use dedicated communications lines, rather than dial-up telephone or telex facilities.

10/ cont'd.
industry sectors (e.g., transportation, banking, credit, insurance, securities, and government). However, such systems have recently been growing rapidly within manufacturing firms, particularly in order entry applications. These systems are usually installed where the "time-value-of-information" is high, and where immediate access to a centralized data base is important, either in order to provide high quality customer service, or to maintain centralized control over corporate operations and finances.

These two communications requirements -- linkage to a central data base and the undesirability of dialing-up to establish connections -- have had a particularly serious impact on the establishment of transaction systems which involve overseas terminal locations; namely, only the very largest transaction systems which have many clusters of terminals in each overseas location (such as certain airline reservation systems) have been able to afford the very high costs of dedicated overseas channels. The vast majority of transaction systems in place and likely to be installed in the future, however, do not individually have sufficient traffic volume to/from individual overseas locations to cost-justify dedicated overseas circuits.

D. Benefits of the Proposed Service

Packet-switching service offers significant advantages over leased channel and circuit-switched data communication services, particularly in overseas data communications. These advantages include (1) greater economy, particularly in interactive and transaction-oriented applications; (2) greater flexibility and convenience for the user; (3) higher quality service performance, and (4) end-to-end service. These advantages are discussed in the following sections.

1. Economy

Packet switching offers several economies to users. First, in many applications it offers reduced direct communication costs. In addition, however, it also offers savings in other areas, such as the elimination of duplicate terminal and computer equipment, a reduction in the number of network development and operations personnel required at each user organization, and an acceleration in the schedules for implementing new computer-communication systems.

For interactive computer users, direct communication costs through the proposed packet service would average approximately $5 to $15 per terminal-hour, depending on the particular system -- an order of magnitude reduction in cost as compared to the use of available circuit-switched services. The leased channel user would require approximately 1,300 to 4,000 terminal-hours of usage per month across the Atlantic to approach this hourly cost,[11] which is a volume level that has been attained by only a handful of the largest interactive system operators. As a result, many hundreds of small commercial service firms, universities, and corporations operating interactive systems -- heretofore economically precluded from including overseas terminal facilities in their computer-communication systems -- will be able to readily provide overseas access to their systems and data bases.

---

[11] This usage figure takes into account only the cost of dual voice-grade U.S.-U.K. circuits, which would be required for adequate reliability, and excludes the substantial costs of access circuits and modems on either end and costs associated with the necessary concentrator equipment: investment in equipment and programming, operations and maintenance personnel, and overhead expenses such as taxes, insurance, and rental of office space to house the concentrator equipment.

The proposed service is also particularly well-suited to meet the communication needs of international transaction systems. For such applications, permanent virtual connections (see Section III.C) can be established between terminals or terminal controllers on one side of the Atlantic and host computers on the other side, without dedicating any bandwidth to the connections when data is not actually being transmitted. Thus, it would be possible to provide transaction systems with fast-response capability across continuously available connections, without incurring the very high cost of a dedicated private network and overseas channels (which would be idle most of the time, given the bursty nature of transaction traffic). Since the typical transaction would involve transmission of two packets (one input and one output), its cost to the user under the tariff rates proposed herein would be only two cents; by contrast, the user would need to send a million transactions per month to achieve the same unit cost using leased channels.[12/] Needless to say, only a very few systems having traffic volumes of this magnitude exist.

2. Quality of Service

The proposed public packet-switching service offers a higher quality communications service than is pos-

---

[12/] As in footnote 11 *supra*, this figure ignores all costs for the leased-channel alternative except the cost of the dual international channels themselves.

sible through the use of the presently available "bare" leased or circuit-switched communications facilities, in terms of (1) rapid connections, (2) integrity of transmission, (3) continuity of service, (4) status information, and (5) terminal-handling facilities.[13/]

End-to-end virtual connections are established through the packet network within one second, as compared to the 10 to 20 seconds required to establish circuit-switched connections through the dial telephone network.

Extremely high data integrity is maintained in the packet network through powerful coding techniques which detect transmission errors and cause automatic retransmission of packets containing such errors. Virtually all transmission errors are thereby detected and corrected, resulting in an error rate five to six orders of magnitude better than available over the raw channel.

Continuity of service is maintained through several mechanisms. First, "hot standby" computer switching equipment is maintained at each node, with automatic monitoring and recovery equipment, such that switching equipment

---

[13/] Johnson, T., "Packet Switched Services and the Data Communications User." A report published by Ovum Ltd. (14 Penn Road, London N7 9RD, United Kingdom), 1976. Hereinafter cited as The Ovum Report. One principal conclusion reached in this comprehensive study was: "A public PSS [packet switching service] can offer a much higher quality of service than is available from present-day data communications facilities, particularly in such areas as rapid connection, full-duplex communication, low error rate and reliability." At page 6, Summary of Conclusions.

failures result in outages of only milliseconds. Second, at least two paths exist between each pair of switching nodes, and automatic routing is used so that in the case of a line failure the routing is automatically and immediately changed. Third, each network node reports its status and that of its nearest neighbors every few seconds to network control facilities. Upon detection of any malfunction, powerful diagnostic programs may be initiated remotely and network programs may be changed or reloaded under remote control, as necessary.

As a direct result of network performance monitoring and traffic measurement, statistical data is accumulated which may be utilized for the generation of summary traffic reports for network users. Also, since the network is "intelligent" in the sense of being programmable and continually monitoring various operational parameters, it is possible to furnish terminal users and on-line hosts with detailed information regarding the status of remote devices with which they may wish to communicate. Thus, it is possible to indicate, not merely that a remote device is "busy", but that it is not operating, not accepting additional traffic, will not accept a call from the particular call originator, or other such information as appropriate. Similarly, it is possible for a host to obtain various types of information about remote terminal devices with which it may be communicating -- e.g., type of terminal.

Finally, the network incorporates a variety of special-purpose terminal handling facilities which permit the host computer to treat various different terminals in a single uniform fashion, if desired. Other available terminal handling features which are particularly desirable in the context of an overseas transmission service are the ability to "buffer" terminal data, to echo characters back to the terminal locally (to ensure correct receipt of the data from character-oriented terminals), and to code-convert character streams.

3. Flexibility

The network service provides users with the flexibility, in terms of capacity-on-demand and usage-based pricing, of a public switched service, while at the same time offering performance and transmission quality even better than that of dedicated channel facilities. Whereas dedicated lines afford a fixed capacity, the network service provides the ability to utilize as much or as little of the network's capacity (within the limits of one's access line facilities) as desired at a given moment in time.

In contrast to the use of dedicated channels, it is not necessary for the user to forecast carefully his future traffic load, other than ensuring that access links have adequate bandwidth for their anticipated usage. It is also possible for the user to make changes in the facilities and access links, in terms of access line speeds or protocols, for a given terminal or host without affecting the other terminals or hosts with which such device communicates.

Importantly, a given device may be used to access a variety of terminal or host systems, and conversely, a host may be accessed by a wide variety of different types of devices which otherwise would have required special handling. As a result, each terminal may be used for more functions, and host computers may be accessed by a larger number of remote terminals, thus increasing their utilization and lowering average costs.[14/]

4. End-to-End Service

Under the proposed service the user is furnished with a complete end-to-end network service. He need not be concerned with multiple suppliers of circuits, modems, multiplexers, etc., nor need he be concerned with the national standards and practices of the overseas facilities. The network provides the necessary transformations between his access facilities and protocols and those used at the remote end of the connection.

V. ECONOMIC JUSTIFICATION

In accordance with Section 63.01(m) of the Commission's Rules, Figure 3 on the following page summarizes the anticipated added revenues and costs associated with the proposed

---

[14/] The Ovum Report concludes that "The flexibility of a PSS [packet switching service] in adapting the service ... very closely to a user's needs at any given time is one of the most valuable features of packet switching." At page 5, Summary of Conclusions.

Figure 3.

TELENET COMMUNICATIONS CORPORATION

Pro Forma Income Statement
US-UK Packet Switched Data Communications Service
(in thousands of $US
except as otherwise noted)

	Year 1	Year 2	Year 3	Cumulative Total
Traffic (megapackets)	21.6	130.4	316.8	468.8
Gross Revenue	216	1,304	3,168	4,688
Net Telenet Revenue after Settlement with BPO	108	652	1,584	2,344
Expenses:				
Depreciation	15	87	210	312
Circuits				
Overseas	110	158	236	504
Domestic Access	13	78	190	281
Wages and Wage-related	96	292	426	814
Other Expenses	6	35	82	123
Total Expenses	240	650	1,144	2,034
Profit (Loss) Before Taxes	(132)	2	440	310
Provision for Taxes	-	1	220	-
Net Ordinary Income (Loss)	(132)	1	220	-
Utilization of Tax Loss Carryforward	-	1	65	-
Net Income (Loss)	(132)	2	285	155

extension of Telenet's network service to the United Kingdom. The following sections explain how the projected revenues and costs were derived.

A. Market and Revenue Projections

Projecting the expected level of usage for the proposed U.S. - U.K. service is difficult for two reasons: First, the level of overseas data transmission is presently so limited (relative to the levels of domestic data transmission within the U.S. and the U.K.) that very little historical or statistical information regarding overseas data traffic exists; and secondly, the little information that is available regarding the usage of existing overseas data transmission services is not particularly indicative of the nature or amount of usage that is likely for the proposed packet-switched service offering, since the proposed offering is so fundamentally different, in terms of both functional performance and pricing structure.

In order to obtain an estimate of the likely level of usage for the proposed service offering, the following market analysis methodology was utilized. First, personal and telephone interviews were conducted both with present and prospective Telenet subscribers in the United States. These interviews helped to define those types of computer applications and those classes of user organizations which would be candidates for the proposed overseas service offering. Second, a survey questionnaire was distributed to these organizations to obtain a more quantitative indication of the nature and amount of overseas data transmission per organization that might be stimulated by the proposed service. Third, the nature and level of usage by various types of systems currently using Telenet's domestic network was reviewed in order to obtain measurements which might be applicable as well for overseas transmissions.

Once the potential market for the proposed service was determined, the realizeable market (i.e., the portion of the market which would in fact utilize the service during the time period in question) was estimated based upon Telenet's experience in introducing a wholly new service into the domestic marketplace. Line 1 in Figure 3 reflects the results of this analysis.[15/]

B. Capital and Operating Costs

The principal items of capital and operating costs associated with the proposed service are described below.

1. Capital Costs

a. Packet switching equipment. Packet switching equipment consists of Telenet Interface Processors (TIPs), including standby units; relay switching equipment for switchover to the standby TIPs in case of processor failure;

[15/] The revenue projections indicated in Figure 3 are quite conservative. Studies such as The Ovum Report predict "rapid growth in usage beginning in the late 1970s, with the [packet] networks carrying several tens of percent of total data traffic by the mid-1980s." Ovum Report, page 11.

high-speed line interface equipment; spares; intra-office cables, accessories, and test equipment; and a pro-rata portion of Network Control Center facility costs.

b. Software development. To a large extent, the software utilized within Telenet's domestic network would be utilized in the proposed network extension and these costs would be shared on a *pro rata* basis. Certain additional software would, however, be required for interfacing at the network-to-network level; for international traffic accounting and billing; and for test and diagnosis of overseas circuits and associated equipment.

c. Systems engineering and installation. The engineering and installation labor associated with the implementation of overseas packet switching facilities would be capitalized, utilizing a factor of 25 percent above direct salary to cover social security taxes and other fringes. Ohter site preparation costs, such as the installation of additional air conditioning capacity, ducting, raised flooring, etc., are also included in this item.

d. Additional working capital. The proposed expanded facilities and operations and initial operating losses would require an increase in working capital, which is reflected in this item.

2. Circuit Expenses

a. Overseas circuits. As stated in paragraph 10 of Section II above, Telenet proposes to obtain its satellite circuits and connecting terrestrial tail circuits under lease from Comsat and AT&T, respectively, at the rates specified therein. Based upon the anticipated level of subscriber demand and the rate of traffic build-up, Telenet has concluded that user requirements during the first six months of service can be accommodated through the use of two 9600 bps circuits between the U.S. and the U.K.; for reliability and security reasons, one would originate at Telenet's Boston Central Office and the other at Telenet's Washington, D.C. Central Office. After six months it is anticipated that two 50 kilobit per second circuits would be necessary, and after approximately 30 months, four 50 kilobit per second circuits would be required. Additional overseas circuits would be added as necessary in subsequent years.

b. Domestic access facilities. Access to the overseas packet-switching facilities would be provided through Telenet's domestic packet network. The domestic packet charges for such usage are treated as a cost in providing the overseas service. Domestic port charges are not included in projected overseas service revenues, and therefore are not included here in access costs for overseas service.

3. Wages and Wage-Related Expenses

a. Computer maintenance. Computer equipment utilized for the overseas service would be maintained in the same manner and by the same personnel who maintain Telenet's domestic packet switching facilities. Labor expenses would be allocated on a *pro rata* basis, reflecting the relative capital costs of the equipment utilized in domestic and overseas service.

b. Operations. Operations personnel assigned to the overseas service at the Boston and Washington, D.C., Telenet Central Offices and at the Network Control Center are included, as well as software maintenance personnel responsible for overseas interconnections and traffic accounting functions.

c. General and administrative. G&A is computed at 50 percent of direct labor.

d. Marketing. Marketing personnel, including sales and systems specialists, would be engaged in both domestic and overseas marketing in light of the fact that customer systems involving overseas service will also, necessarily, utilize domestic facilities as well. Wages and wage-related marketing expenses are therefore allocated on a pro rata basis.

4. Other Expenses

a. Space and power. Site expenses for space and power are based upon a pro rata allocation of these expenses according to the proportion of equipment utilized in the overseas service.

b. Property taxes and insurance. Property tax and insurance is computed at 10 percent of equipment book value.

WHEREFORE, in light of the demonstrated utility of packet-switching technology, the public need for international data communications services having the characteristics which this technology can provide, and Telenet's unique qualifications in this field, including its operation of the only public packet-switching network in the United States today, the Commission is respectfully requested to authorize Telenet to establish and operate the service proposed herein.

Respectfully submitted,
TELENET COMMUNICATIONS CORPORATION

By
Lawrence G. Roberts
President

May 4, 1976

Exhibit A

BPO/Telenet Correspondence

External Telecommunications Executive

SERVICE POLICY, RATES AND TARIFFS

POST OFFICE

ALDER HOUSE
1 ALDERSGATE STREET
LONDON EC1A 1AL

Telephone:
01- 432 4923
~~Telex: 21601 (POETE LDN)~~

In any reply please quote:
ET1

Your reference:

RECEIVED
APR 26 1976

Dr Lawrence G Roberts
President
Telenet Communications Corporation
1666 K Street, NW
Washington DC 20006
USA

21st April 1976

Dear Dr Roberts

Further to our recent discussion, I am pleased to advise you that the British Post Office wishes to provide access for its customers to the Telenet Packet Switched Data Communications Network in the United States and similarly to allow access for Telenet customers in the United States to customers in the United Kingdom. The British Post Office would offer this access through a new packet switched data communications service to be established between the United States and the United Kingdom, with the aim of providing access to all duly authorised packet switching networks in the USA.

We would envisage interconnection between our two countries utilising direct satellite or cable circuits operating at 9600 bits/s or higher speeds depending upon the demand, connecting an International Gateway Node in London to the USA. For adequate reliability the use of two diversely routed circuits is desirable. The Post Office would provide its half of such circuits and appropriate arrangements would need to be made in the United States to provide the matching halves.

We are anxious to be able to provide this service for our customers at an early date and would hope it possible to commence by the end of 1976. It should be noted that we would desire to utilise appropriate CCITT interface standards in effecting the international interconnection. In the UK we expect to be in a position within three years to provide a complete international packet switching gateway exchange capable of interconnection at internationally agreed standards to any suitably equipped country. In the interim we will be prepared to make expedient arrangements for the provision of service to the USA.

Customer charges to be applied in each country would be set independently and according to national practices and legislation. From an initial assessment of the market, an accounting rate of US $9.00 for 1000 packets (128 bytes/packet) seems appropriate to cover the communications element of the service on an end-to-end basis, such rate to be divided equally between the UK and the USA. I shall be grateful to know if the foregoing proposals are acceptable and to be advised of the arrangements for providing the international access to your network in the USA.

/As

As discussed, because of their expressed close interest in the development of international data services, I will be informing my colleagues in other CEPT Administrations of the terms of this letter and copying it to our present correspondents in the United States.

Yours sincerely

M L FORD

Telenet Communications Corporation 1666 K Street N.W. Washington, D.C. 20006 (202) 785-6444

Lawrence G. Roberts
President

April 30, 1976

Mr. Michael L. Ford
Service Policy, Rates and Tariffs
External Telecommunications Executive
British Post Office
Alder House
1 Aldersgate Street
London EC1A 1AL
United Kingdom

Dear Mr. Ford:

On behalf of Telenet Communications Corporation, I am pleased to accept the offer of the British Post Office to establish an interconnection between Telenet's public packet-switching network in the United States and your packet-switching facilities in the United Kingdom, for the exchange of data communications traffic under the terms of your letter of April 21, 1976.

In light of the anticipated traffic volumes, and subject to FCC approval, we propose that the interconnection be established initially via two diversely routed 9.6 kilobit/second satellite channels, and that these channels be upgraded to 50 kilobits/second capacity as traffic volume warrants. It is anticipated that such upgrading will occur approximately six months following commencement of the service.

We share your desire to commence service between the U.S. and the U.K. by the end of this year, and towards this end we will be prepared to activate our half-circuits promptly following FCC approval of our application therefor. In the meanwhile, our respective engineering departments should continue their discussions concerning the technical details of the interconnection arrangements.

We look forward to working with you in establishing this exciting new service, which we are confident will stimulate the emergence of important new computer/communications applications among users in both our respective countries.

Sincerely,

Lawrence G. Roberts

LGR/jn

a subsidiary of Bolt Beranek and Newman Inc.

Graphnet [illegible]

99 West Sheffield Avenue Englewood [illegible]

May 26, 1976

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Mullins:

On February 18, 1976, an application was filed by Graphnet Systems, Inc., for appropriate authority to permit communications by Graphnet subscribers with addressee facsimile terminal locations in 11 Western European countries. An amendment to the application was filed April 1, 1976.

By letter dated April 30, 1976, the Chief of the Common Carrier Bureau requested certain additional information concerning the application. Submitted below, by way of amendment to Graphnet's application, is the information requested. For ease of reference, the information is submitted in the order and format used in the Commission Staff's letter.

Inquiry (a): Describe the structure and operation of the proposed communication system utilizing the leased satellite circuits.

Response:

During the first two years of operation, Graphnet's concentrator in the New York metropolitan area will be connected via leased AT&T conditioned Series 3000 facilities to COMSAT's earth station at Etam, West Virginia. Each such dedicated line will connect with a voice grade satellite circuit provided by COMSAT pursuant to its F.C.C. Tariff No. 9. Under this tariff, the circuits are not provided on a dedicated point-to-point basis, but rather on an as-demanded point-to-any-point basis. Hence, each of these circuits can be utilized by Graphnet to dial into any of the countries to which service is proposed. Graphnet concentrator equipment will dial over the leased AT&T facilities and the COMSAT satellite circuit path directly to the recipient's facsimile device for delivery of documents. As the actual volume of such traffic increases, and as potential economies indicate, dedicated satellite circuits may be leased from COMSAT.

In the third year of operation, a Graphnet concentrator placed in the Etam, West Virginia, area would replace the New York area device. In the fourth and fifth years of operation, two additional concentrators would be placed in the Etam area, bringing the total number to three.

Each Graphnet concentrator will also be capable of accepting input on a dial basis from European users. Such traffic would originate at an overseas point, be passed on to a foreign correspondent's earth station, up to the satellite, down to the Etam earth station, and then to the Graphnet concentrator via terrestrial facilities.

Inquiry (b): Indicate what terrestrial facilities will be required to interconnect the satellite circuits with Graphnet's existing network.

Response:

Year	AT&T Series 3000 Facilities
1st	4 channels
2nd	6 "
3rd	11 "
4th	19 "
5th	31 "

Inquiry (c): Indicate whether Graphnet proposes to lease only circuits in the satellite uplink or whether Graphnet would lease both uplink and downlink satellite circuits.

Response:

Graphnet proposes to lease circuits only in the satellite uplink.

Inquiry (d): Specify the number of channels Graphnet proposes to provide between the United States and each of the overseas points it proposes to serve.

Response:

This inquiry is not applicable to Graphnet's proposal, since channels are assigned on a demand basis, not a dedicated basis. Each channel can be used to access any of the overseas terminal points addressed.

Inquiry (e): Indicate what relationships, if any, the proposed operation would require Graphnet to establish with specific foreign entities.

Response:

The proposed operation contemplates an appropriate agreement with foreign correspondent carriers in the designated overseas countries whereby any necessary interface with such carriers' satellite facilities would be established, and the foreign local telephone network would be utilized for distribution of the communications originated by Graphnet subscribers.

Inquiry (f): Provide detailed information as to the estimated revenues and costs which would be associated with the proposed service.

Response:

Appended hereto as Amended Attachment 2 is a tabulation of the information requested.

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

By Richard J. Glasgow
Richard J. Glasgow
Executive Vice President, Operations

Attachment

REVENUE AND COST ESTIMATES FOR THE PROPOSED GRAPHNET SERVICE*

	YEAR				
	1st	2nd	3rd	4th	5th
Revenues					
No. of Documents	72,000	132,600	202,800	369,000	617,000
Total Revenues	$ 612,000	$1,127,100	$1,723,800	$3,136,500	$5,244,500
Operating Costs					
Delivery Cost	517,140	943,970	1,412,060	2,569,860	4,292,280
Acceptance Cost	36,000	59,670	81,120	129,150	185,100
Marketing-Sales-Operational Personnel	27,500	38,500	49,500	71,500	93,500
Sales Literature & Marketing Expense	35,000	40,000	50,000	50,000	50,000
Equipment Maintenance	7,000	7,000	7,000	10,000	12,000
Occupancy Cost	5,000	5,000	5,000	6,000	7,500
Billing & Mailing	3,600	6,630	10,140	18,450	30,850
Depreciation - 5 Year (Straight Line)	8,640	8,640	8,640	17,280	25,970
Total Operating Costs	$ 639,880	$1,109,410	$1,623,460	$2,872,240	$4,697,200
Income (Loss)	$ (27,830)	$ 17,690	$ 100,340	$ 264,260	$ 547,300
Equipment Purchase					
Concentrator	$ 43,200				
Concentrator				$ 43,200	
Concentrator					$ 43,200

---

* While Graphnet intends to offer any-digital-input/facsimile-output services in both directions, the cost and revenue figures herein are based only on Graphnet's facsimile-to-facsimile service offering from the United States to Europe. Use of the other digital input service capabilities would favorably impact the financial viability of the proposed offering.

Amended Attachment 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION) File No. I-T-C-2634
)
Application for Authority to Extend Packet-)
Switched Data Communications Service)
from the Continental United States to the)
United Kingdom and Points Beyond)

ITT WORLD COMMUNICATIONS INC.'S PETITION FOR REJECTION (AND CONTINGENT MOTION FOR EXTENSION OF TIME)

ITT World Communications Inc. (ITT Worldcom) hereby petitions the Commission to reject, as insufficient to meet the threshold requirements for approval under Section 214 of the Communications Act of 1934, as amended, the above-captioned application of Telenet Communications Corporation (Telenet). In support hereof, ITT Worldcom submits the following:

1. The fatal defect in Telenet's application is that the service proposed therein cannot be implemented. Such service is contingent upon the provision by the British Post Office (BPO) of matching facilities between the United Kingdom and the Atlantic communications satellites,[1/] but Telenet has absolutely no agreement to so

---

[1/] Application, pp. 4, 5, 7, 8, 12.

operate in conjunction with that administration. This has been confirmed by the BPO, in a writing which leaves no conceivable doubt about the academic nature of the instant application.

2. Thus, after Telenet erroneously construed an April 21, 1976 letter from the BPO as an "offer" of an operating agreement and, by letter of April 30, 1976, purported to "accept" the same,[2] the BPO quickly and decisively set the record straight. By letter of May 25, 1976,[3] it flatly advised Telenet:

> " ...[M]y letter of 21 April 1976...was not an offer by the British Post Office to establish a direct interconnection between Telenet's Public Packet Switching Network in the United States and the Post Office's Packet Switching Facilities in the United Kingdom on the lines described in your application to the FCC...The Post Office did not consider it appropriate to make any proposals in relation to how the international facilities should be provided to interconnect with the Post Office, in the absence of any agreement between Telenet and any of the recognised international carriers in the U.S.
>
> ...[A]s far as the British Post Office is concerned, we have no agreement with Telenet Communications Corporation to establish a direct service nor to make a joint service offering...[T]he British Post Office has not agreed

---

[2] Application, Exhibit A.

[3] Exhibit 1 hereto.

> to furnish and operate matching facilities between United Kingdom and the Atlantic communications satellites as specified in ...paragraph 10 [of the application]. ...[T]he British Post Office has no current plans which would enable it to establish [the contemplated] circuits via the Atlantic Major Path Satellite" (emphasis supplied).

3. Based upon the foregoing, the subject application must be rejected out of hand. As the Commission recently stated:

> "...before authorizing a carrier to make expenditures for facilities which will be included in its rate base, the Commission must find not only that there will be a need for added facilities, but that the facilities proposed can and will be used to fulfill that need." [4]

Obviously, it is impossible for the Commission to make the required finding that Telenet's proposed facilities "can and will be used" in any manner.

4. Put another way, rejection is the only appropriate remedy since the question of "whether construction of ...facilities would be wasteful" lies "at the heart of a section 214 proceeding." [5] Clearly, such waste would be the only thing accomplished by a grant of the requested authority.

---

[4] Letter from the Chief, Common Carrier Bureau, to Communications Satellite Corporation, FCC File No. 18-CSS-P-76, May 14, 1976, p. 2.

[5] New England Telephone & Telegraph Co., 17 F.C.C. 2d 33, 37 (1969). The applicability of the above principle, of course, does not turn upon whether the facilities are to be constructed or, as in this case, leased.

5. An apt precedent for the relief sought herein is the Commission's action, just a few years ago, upon an application by Tropical Radio Telegraph Company (TRT) for Section 214 authority to acquire up to 90 circuits in the TAT-6 cable "for its future use."[6] Finding that, inter alia, "TRT does not show that it has any agreement with any overseas correspondents for the use of such circuits," the Commission dismissed the application because, like here, "we are in no position to take affirmative action on the TRT application."[7]

CONCLUSION

For the reasons heretofore stated, Telenet's above-captioned application should be rejected. Apart from being compelled as a matter of law, a disposition of Telenet's academic application upon the indicated threshold ground would also obviate the wholly unnecessary and burdensome need to consider all the other public

---

6/ American Telephone & Telegraph Co., 35 F.C.C. 2d 801, 823 (1972).

7/ Ibid. Cf. Better T.V., Inc. of Dutchess County, New York, 26 F.C.C. 2d 67, 69 (1970) (denying a conditional grant, pending a hearing, of a telephone company's application for CATV channel distribution facilities on the ground that, if the application were ultimately denied, "there is little likelihood that any significant part" of the facilities could be used for alternative purposes.)

interest issues that might well be engendered by its 47 page filing. For this reason, ITT Worldcom is submitting this limited pleading on the originally scheduled comment date, despite the pending motion by RCA Global Communications, Inc. (RCA Globcom) to extend such date to June 23, 1976. If, however, the Commission does not in all respects grant the relief sought herein, ITT Worldcom requests that it be afforded 30 days from the issuance of the appropriate Order to address any remaining issues (and, in that event, such 30 day period should supersede the comment date fixed as a result of the RCA Globcom motion).

Respectfully submitted,

ITT World Communications Inc.

By:

Joseph J. Jacobs/TJF

Joseph J. Jacobs

Theodore J. Fischkin

Theodore J. Fischkin

Its Attorneys
67 Broad Street
New York, New York 10004

Dated: June 7, 1976

EXECUTIVE
ITT-
RECE

423400 EXCA UI
POETE LDN

AH1445/5

ROMANELLI, WESTERN UNION INTERNATIONAL INC NEW YORK

PAWSON, WESTERN UNION INTERNATIONAL INC LONDON

PODMOLIK, ITT WORLD COMS; NEW YORK

WHITE, COMMERCIAL CABLE COMPANY LONDON

ANGLISS, RCA GLOBCAL COMMUNICATIONS INC NEW YORK

BERNAS, RCA GLOBAL COMMUNICATIONS IN LONDON

LUBETZKY, TRT TELECOMMS CORP WASHINGTON

COOPER, ATANDT LONG LINES NEW YORK

LAWLER, COMSAT WASHINGTON

2505/1400G/ET1

FOR INFORMATION, TEXT OF LETTER POSTED TODAY TO TELENET, COPIED TO YOU, FOLLOWS IN VIEW OF POSSIBLE POST DELAYS.

QUOTE
DR L G ROBERTS
TELENET COMMUNICATIONS CORPORATION
166 K STREET, NEW
WASHINGTON DC 20006
USA

25 MAY 1976

THANK YOU FOR YOUR LETTER OF 30 APRIL AND FOR SENDING ME A COPY OF YOUR LETTER OF 4 MAY TO THE CHAIRMAN OF THE FEDERAL COMMUNICATIONS COMMISSION AND A COPY OF YOUR APPLICATION TO THE COMMISSION OF THAT DATE.

I REGRET THAT THERE SEEMS TO HAVE BEEN SOME MISUNDERSTANDING OF MY LETTER OF 21 APRIL 1976 AS THIS WAS NOT AN OFFER BY THE BRITISH POST OFFICE TO ESTABLISH A DIRECT INTERCONNECTION BETWEEN TELENET'S PUBLIC PACKET SWITCHING NETWORK IN THE UNITED STATES AND THE POST OFFICE'S PACKET SWITCHING FACILITIES IN THE UNITED KINGDOM ON THE LINES DESCRIBED IN YOUR APPLICATION TO THE FCC. THE LETTER EXPRESSED A DESIRE FOR THE PROVISION OF FACILITIES TO ALLOW POST OFFICE CUSTOMERS TO BE ABLE TO GAIN ACCESS TO THE DOMESTIC VALUE ADDED NETWORK OPERATED BY TELENET. THE POST OFFICE DID NOT CONSIDER IT APPROPRIATE TO MAKE ANY PROPOSALS IN RELATION TO HOW THE INTERNATIONAL FACILITIES SHOULD BE PROVIDED TO INTERCONNECT WITH THE POST OFFICE, IN THE ABSENCE OF ANY AGREEMENT BETWEEN TELENET AND ANY OF THE RECOGNISED INTERNATIONAL CARRIERS IN THE US.

IN RELATION TO YOUR APPLICATION TO THE FCC, I FEEL I MUST EMPHASISE, AS I DID TO THE AUTHORISED INTERNATIONAL CARRIERS IN THE US, THAT AS FAR AS THE BRITISH POST OFFICE IS CONCERNED, WE HAVE NO AGREEMENT WITH TELENET COMMUNICATIONS CORPORATION TO ESTABLISH A DIRECT SERVICE NOR TO MAKE A JOINT SERVICE OFFERING.
WE ARE PREPARED TO CONSIDER ANY SPECIFIC PROPOSALS FOR THE INTERNATIONAL INTERCONNECTION WITH THE TELENET DOMESTIC NETWORK BUT IT WOULD BE ERRONEOUS TO CONCLUDE THAT WE HAVE REACHED ANY FORMAL AGREEMENT. IN PARTICULAR, WITH RELATION TO PARAGRAPHS 10 AND 11 OF SECTION II OF YOUR APPLICATION TO THE FCC, THE BRITISH POST OFFICE HAS NOT AGREED TO FURNISH AND OPERATE MATCHING FACILITIES BETWEEN UNITED KINGDOM AND THE ATLANTIC COMMUNICATIONS SATELLITES AS SPECIFIED IN YOUR PARAGRAPH 10. IN MY LETTER OF 21 APRIL, I INDICATED THAT WE ENVISAGED THE ESTABLISHMENT OF TWO DIVERSELY ROUTED CIRCUITS TO OPERATE AT 9,600 BITS PER SECOND.
I DID NOT AGREE THAT BOTH CIRCUITS SHOULD BE ROUTED VIA THE ATLANTIC COMMUNICATIONS SATELLITES NOR THAT THERE SHOULD BE TWO CIRCUITS OPERATING AT 50,000 BITS PER SECOND. INDEED, THE BRITISH POST OFFICE HAS NO CURRENT PLANS WHICH WOULD ENABLE IT TO ESTABLISH SUCH CIRCUITS VIA THE ATLANTIC MAJOR PATH SATELLITE.

I THINK IT WOULD BE HELPFUL TO CLARIFY FURTHER THE BRITISH POST OFFICE POSITION WITH REGARD TO THE DEVELOPMENT OF ITS PACKET SWITCHED DATA SERVICES. IT IS PROPOSED TO ESTABLISH AN INTERNATIONAL PACKET SWITCHING GATEWAY IN THE UNITED KINGDOM TO BE IN SERVICE IN ABOUT THREE YEARS TIME TO PROVIDE INTERNATIONAL PACKET SWITCHED DATA COMMUNICATIONS SERVICES TO ALL COUNTRIES, BOTH WITHIN EUROPE AND ELSEWHERE, SUITABLY EQUIPPED TO OPERATE IN THIS MANNER, THIS GATEWAY WOULD PROVIDE ACCESS, VIA APPROPRIATE MEANS, TO POTENTIAL CUSTOMERS IN THE UNITED KINGDOM AND IN DUE COURSE INTERCONNECTION TO THE NATIONAL PACKET SWITCHED NETWORK WHICH IT IS HOPED WILL FOLLOW THE EXPERIMENTAL NETWORK CURRENTLY BEING ESTABLISHED.

311/Msngr.-7. /Intor.-7550/Telex-7590 W. World Communic

ITT World Communications Inc. NY Phone Serv:Telegr.797-3

IN THE MEANTIME WE ARE CONSIDERING INTERIM ARRANGEMENTS FOR THE ESTABLISHMENT OF A PACKET SWITCHED DATA COMMUNICATIONS SERVICE WITH THE UNITED STATES ON SOME EXPEDIENT BASIS: ONE WHICH CAN DEVELOP INTO AND BE ABSORBED BY THE MAJOR GATEWAY DESCRIBED ABOVE. IT IS EXPECTED THAT ANY EXPEDIENT SOLUTION WOULD BE BASED UPON THE CCITT STANDARDS CURRENTLY BEING DEVELOPED. THEREFORE, BECAUSE OF BASIC DIFFERENCES IN PROTOCOLS AND STANDARDS IT IS NOT EXPECTED THAT THE INTERIM ARRANGEMENT WOULD BE INTERCONNECTED WITH THE DOMESTIC EXPERIMENTAL PACKET SWITCHED SERVICE (EPSS) OPENING THIS YEAR IN THE UNITED KINGDOM. INSTEAD OUR NATIONAL DOMESTIC CONNECTIONS TO THE SERVICE WITH THE UNITED STATES WOULD BE PROVIDED USING THE EXISTING PUBLIC NETWORKS IN THE UNITED KINGDOM OR BY SPECIAL DIRECT CONNECTIONS, DEPENDING UPON THE EXPEDIENT ARRANGEMENTS EVENTUALLY DEVELOPED. IT IS HOPED THAT WHATEVER INTERIM MEASURES ARE ADOPTED, THEY WILL BE ABLE TO PROVIDE ACCESS FOR UK CUSTOMERS TO OTHER DOMESTIC DATA NETWORKS IN THE UNITED STATES IN ADDITION TO TELENET.

IN VIEW OF THE APPARENT MISUNDERSTANDINGS REFERRED TO ABOVE, WHICH WERE EVIDENT FROM NUMEROUS COMMENTS MADE TO ME DURING MY RECENT VISIT TO THE ICA CONFERENCE IN WASHINGTON, AND FROM PRESS COVERAGE OF YOUR FILING, I WOULD BE GRATEFUL IF YOU WOULD DRAW THE CLARIFICATIONS SET OUT IN THIS LETTER TO THE ATTENTION OF THE FCC. AS WITH MY PREVIOUS LETTER, I AM SENDING COPIES TO MY COLLEAGUES IN OTHER CEPT ADMINISTRATIONS AND TO OUR PRESENT CORRESPONDENTS IN THE UNITED STATES.

M L FORD

UNQUOTE

FORD
POETE LONDON (TELEX21601)

SENT 2032/25
POETE LDN +
423400 EXCA UI

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of TELENET COMMUNICATIONS CORPORATION Application for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond	File No. I-T-C-2634

To The Commission:

MOTION FOR EXTENSION OF TIME

RCA Global Communications, Inc. (RCA Globcom), pursuant to Section 1.46 of the Commission's Rules and Regulations, hereby moves that the Commission extend the deadline for the submission of comments addressing the aforecaptioned Application from June 7, 1976 to a date at least thirty days from the time public notice concerning the Application was given.

Whereas, in support of this Motion, the following is shown:

The aforecaptioned Application was filed with the Commission on May 4, 1976. Public Notice (Report No. I-233), issued on May 24, 1976, indicated that the Application was accepted by the Commission for filing. A mere 14 days was established as the time period within which comments responsive to the Application could be submitted. These 14 days in fact include no less than 5 "holidays" as that term is defined at Section 1.4(d) of the Commission's Rules.

The instant Application in no respect can be viewed either as ordinary or routine. It constitutes the first time that a so-called "value-added carrier" with certain existing domestic authorization has had noticed an Application to extend its offerings to an overseas foreign point. Accordingly, substantial legal and policy questions are raised and must be considered and resolved within the context of the subject Application.

In addition, we note that very recent amendments to pertinent provisions of Part 63 of the Commission's Rules, "for purposes of consistency and clarity", establish "a 30-day period for the filing of petitions to deny applications". 1/ While, of course, these amendments do not appear to foreclose the Commission in appropriate situations from limiting responsive pleadings to within a 14-day or lesser period from rendition of public notice, they nevertheless indicate an apparent need and preference for a 30-day response period at least in exceptional circumstances. This, we believe, is the case here where the Application clearly is other than ordinary or routine.

Finally, we have been served with a copy of correspondence from the British Post Office to the Applicant, dated May 25, 1976 -- one day after public notice of the instant Application was effected -- that we believe is pertinent to this Motion. Apart from the significance of the substance of such correspondence, its content reveals that a grant of this Motion will prejudice neither the public interest nor the rights

---

1/ In Re Amendment of Part 63 of the Commission's Rules and Regulations FCC 76-429, released May 18, 1976, at Para. 3 and Appendix, p. 8. These amendments were made effective two days after the Commission set the instant Application on public notice.

of the Applicant in eventually pursuing its objective.

We are authorized by Counsel for Telenet to state that Telenet concurs in this request, insofar as it would result in the grant of an extension to June 23, 1976.

Wherefore, for all the above reasons, good cause having been shown, the Commission respectfully is requested to extend the comment period to at least 30 days beyond the rendition of public notice.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

By: FJ DeRosa (DJ Elardo)
Francis J. DeRosa
60 Broad Street
New York, New York 10004

By: Donald J Elardo
Donald J. Elardo
2030 M Street, N.W.
Washington, D. C. 20036

Its Attorneys

Dated: May 28, 1976

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

Telephone (212) 363-5812

June 7, 1976

Mr. Vincent J. Mullins, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Telenet Communications Corporation
File No. I-T-C-2634

Dear Mr. Mullins:

On May 24, 1976 the Commission accepted for filing the above-referenced application by Telenet for its initial entry into the overseas market by providing packet switched data communications service from the continental United States to the United Kingdom, and beyond.

Western Union International, Inc. (WUI) submits that Telenet's application for service to the United Kingdom is clearly incomplete, substantively and procedurally defective and deserving of no consideration by the Commission. As pointed out by letter of May 25, 1976 to Telenet from the British Post Office (BPO), Telenet's purported United Kingdom correspondent, with copies to the U.S. international carriers, BPO has "no agreement with Telenet Communications Corporation to establish a direct service nor to make a joint service offering." Citing an "apparent misunderstanding," the BPO continues to state that:

> "...it would be erroneous to conclude that we have reached any formal agreement. In particular, with relation to paragraphs 10 and 11 of Section 11 of your application to the FCC, the British Post Office has not agreed to furnish and operate matching facilities between United Kingdom and the Atlantic communications satellites as specified in your paragraph 10."

Apparently the Commission accepted Telenet's application for filing in reliance upon Telenet's representation in paragraph 11, page 5 of its application that the "BPO" has agreed to furnish and operate matching facilities between the United Kingdom and the Atlantic communications satellites." Telenet also submitted as Exhibit A to its application copies of correspondence purporting to establish an interconnection between the BPO and Telenet. However, in its May 25 letter, the BPO requested Telenet to "draw the clarifications set out in this letter to the attention of the FCC." A copy of the BPO letter of May 25, is attached hereto.

If it had known of this situation, doubtless the Commission would not have placed Telenet's application on Public Notice. The application would have been recognized as substantively flawed consistent with longstanding Commission requirements that applications for international service contain a description of the nature of the applicant's operating arrangements with the appropriate foreign correspondent(s). In this regard, see for example, letter dated April 21, 1976 (Reference No. 9420) from the Chief, Common Carrier Bureau to American Telephone and Telegraph Company advising that AT&T's recently tendered application for international DATAPHONE service would not be accepted for filing without a specific and complete submission regarding proposed arrangements with AT&T's foreign correspondents.

In view of the obvious inadequacy and flawed nature of Telenet's application, WUI will not at this time address itself to the remaining substance thereof. WUI reserves its rights, however, to comment upon other aspects of the Telenet application should the existing fatal defect be cured at some later date.

Inasmuch as Telenet's instant application has been accepted for filing, albeit mistakenly, WUI requests dismissal of the application. If deemed procedurally necessary, the Commission may consider this letter as a Petition to Deny. Accordingly, pursuant to Rule 63.52 as amended May 26, 1976, WUI submits an original and 5 copies of this letter.

Very truly yours,

Robert Michelson

Attachment

cc: Telenet Communications Corporation

External Telecommunications Executive

POST OFFICE

ALDER HOUSE
1 ALDERSGATE STREET
LONDON EC1A 1AL

Telephone:
01- 432 4923
Telex: 21601 (POETE LDN)

In any reply please quote:
ET1

Your reference:

Dr L G Roberts
Telenet Communications Corporation
1666 K Street, NW
Washington DC 20006
USA

25 May 1976

Dear Dr Roberts

Thank you for your letter of 30 April and for sending me a copy of your letter of 4 May to the Chairman of the Federal Communications Commission, and a copy of your application to the Commission of that date.

I regret that there seems to have been some misunderstanding of my letter of 21 April 1976 as this was not an offer by the British Post Office to establish a direct interconnection between Telenet's public packet switching network in the United States and the Post Office's packet switching facilities in the United Kingdom on the lines described in your application to the FCC. The letter expressed a desire for the provision of facilities to allow Post Office customers to be able to gain access to the domestic value added network operated by Telenet. The Post Office did not consider it appropriate to make any proposals in relation to how the international facilities should be provided to interconnect with the Post Office, in the absence of any agreement between Telenet and any of the recognised international carriers in the US.

In relation to your application to the FCC, I feel I must emphasise, as I did to the authorised international carriers in the US, that as far as the British Post Office is concerned, we have no agreement with Telenet Communications Corporation to establish a direct service nor to make a joint service offering. We are prepared to consider any specific proposals for the international interconnection with the Telenet domestic network but it would be erroneous to conclude that we have reached any formal agreement. In particular, with relation to paragraphs 10 and 11 of Section II of your application to the FCC, the British Post Office has not agreed to furnish and operate matching facilities between United Kingdom and the Atlantic communications satellites as specified in your paragraph 10. In my letter of 21 April, I indicated that we envisaged the establishment of two diversely routed circuits to operate at 9,600 bits per second. I did not agree that both circuits should be routed via the Atlantic communications satellites nor that there should be two circuits operating at 50,000 bits per second. Indeed, the British Post Office has no current plans which would enable it to establish such circuits via the Atlantic major path satellite.

/I think

I think it would be helpful to clarify further the British Post Office position with regard to the development of its packet switched data services. It is proposed to establish an international packet switching gateway in the United Kingdom to be in service in about three years time to provide international packet switched data communications services to all countries, both within Europe and elsewhere, suitably equipped to operate in this manner. This gateway would provide access, via appropriate means, to potential customers in the United Kingdom and in due course interconnection to the national packet switched network which it is hoped will follow the experimental network currently being established.

In the meantime we are considering interim arrangements for the establishment of a packet switched data communications service with the United States on some expedient basis; one which can develop into and be absorbed by the major gateway described above. It is expected that any expedient solution would be based upon the CCITT standards currently being developed. Therefore, because of basic differences in protocols and standards it is not expected that the interim arrangement would be interconnected with the domestic Experimental Packet Switched Service (EPSS) opening this year in the United Kingdom. Instead our national domestic connections to the service with the United States would be provided using the existing public networks in the United Kingdom or by special direct connections, depending upon the expedient arrangements eventually developed. It is hoped that whatever interim measures are adopted, they will be able to provide access for UK customers to other domestic data networks in the United States in addition to Telenet.

In view of the apparent misunderstandings referred to above, which were evident from numerous comments made to me during my recent visit to the ICA Conference in Washington, and from press coverage of your filing, I would be grateful if you would draw the clarifications set out in this letter to the attention of the FCC. As with my previous letter, I am sending copies to my colleagues in other CEPT Administrations and to our present correspondents in the United States.

yours sincerely

M L FORD

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION)
)
Application for Authority to) File No. I-T-C-2634
Extend Packet-Switched Data)
Communications Service from)
the Continental United States)
to the United Kingdom and Points)
Beyond)

OPPOSITION OF TELENET COMMUNICATIONS CORPORATION TO WESTERN UNION INTERNATIONAL'S REQUEST FOR DISMISSAL, AND TO ITT WORLD COMMUNICATION'S PETITION FOR REJECTION

Telenet Communications Corporation (hereinafter Telenet) hereby submits its opposition to the June 7, 1976 letter of Western Union International, Inc., and to "ITT World Communications, Inc.'s Petition for Rejection (and Contingent Motion for Extension of Time)", of the same date, stating as follows:

Both Western Union International (hereinafter WUI) and ITT World Communications (hereinafter ITT) seek identical relief: The outright dismissal, without substantive consideration, of Telenet's application for authority to extend its packet-switched data communications service from the United States to Europe. Their requests are premised on the single fact that Telenet and its intended foreign correspondent, the British Post Office, do not at the present time have a "formal agreement" with respect to the proposed service, and on the unsupported claim that such an agreement is an essential component of a Section 214 application.

A. The BPO May 25 Letter Does Not Alter the Basis Upon Which the Commission Accepted Telenet's Application

Both WUI and ITT make much of the fact that the BPO, by letter of May 25, 1976, has pointed out that "it would be erroneous to conclude that we /i.e., Telenet and the BPO/ have reached any formal agreement" for the provision of such service. This was apparent from the application itself, which did not assert that any such "formal agreement" exists. In fact, Telenet's application contained as Exhibit A the BPO's letter of April 21, 1976, detailing the BPO's position, and its interest in establishing some type of arrangement to permit its customers in the United Kingdom to access Telenet's domestic network, and Telenet's customers to have access to the BPO's customers in the United Kingdom. No "formal agreement" was suggested or implied by that letter, or by Telenet's application.

It is significant to note that the BPO letter of May 25 does not suggest that Telenet's application was erroneous in this respect[1]: Purported "misunderstandings" to the nature of the BPO-Telenet relationship are *not* attributed by the BPO to Telenet or to its application, but to "numerous comments made [to the BPO's representative] during [his] recent visit to the ICA conference in Washington, and from press coverage of [Telenet's] filing."

---

[1] The BPO did point out that it has no present plans which would enable it to establish 50 Kbps channel termination facilities for the Atlantic "Major Path" Satellite. This fact, which affects one of the two 50 Kbps channels for which Telenet sought approval, will be dealt with in a separate communication to the Commission.

ITT claims that "after Telenet erroneously construed an April 21, 1976 letter from the BPO as an 'offer' of an operating agreement and, by letter of April 30, 1976, purported to 'accept' the same, the BPO quickly and decisively set the record straight." ITT's claim rests on a distortion of the exchange of correspondence: Telenet's April 30, 1976 letter said nothing of an "operating agreement": It merely accepted "the offer of the British Post Office to establish an interconnection between" Telenet's domestic network and the BPO's packet-switching facilities in the U.K. The BPO's May 25 letter does not negate its desire to establish an interconnection with Telenet's domestic network as expressly stated in its April 21 letter, nor does it vitiate Telenet's April 30 response, outlining the basis upon which Telenet - subject to Commission approval - intends to fulfill the BPO's desire.

Obviously, The BPO and Telenet will, at an appropriate future point, develop a formal operating agreement, as a prelude to instituting the proposed service. In the meantime, their exchange of correspondence provides an adequate basis for the Commission to process and grant Telenet's application.

B. A "Formal Agreement" is Not a Prerequisite To Favorable Consideration of Telenet's Application

The requests of ITT and WUI for threshold rejection of the Telenet application rest upon the premise that such an application is fatally defective in the absence of a formal agreement with the intended overseas correspondent. No section of the Communications Act, nor any Commission Rule, supports such a contention.[2/]

ITT asserts as precedential the Commission's rejection of a TRT application for authority to acquire up to 90 TAT-6 circuits for its future use; AT&T, 35 FCC2d 801, at 823 (1972). While ITT notes that there, TRT had submitted no agreement with overseas correspondents for the use of such circuits, it ignores that the Commission also stated:

> "Furthermore, TRT does not give the Commission the necessary data which would support the grant of an application to a fourth carrier to enter generally into the market to compete for traffic to Europe, Africa and the Middle East. Under these circumstances we are in no position to take affirmative action on the TRT application. We shall therefore dismiss it without prejudice to a later filing, which will give sufficient information upon which to decide the basic policy issue of whether it should be permitted to enter this area generally as a fourth competing carrier ..."

No similar failure on Telenet's part to supply supporting data

---

[2/] ITT and WUI appear to suggest that there exist privately understood requirements for international 214 applications, which are not the subject of published rules. If true, such requirements would be violative of 5 USC Section 552(a)(1), and its requirement that agencies publish their "rules of procedure" and "substantive rules of general applicability."

has been alleged by ITT or WUI, nor does Telenet's application provide any basis for the assertion of such a failure. Thus, the cited case is easily distinguishable.

WUI cites as precedent, for the proposition that a formal agreement with a foreign correspondent is the sine qua non of an acceptable Section 214 application, the Bureau Chief's letter of April 21, 1976 (reference 9420), to AT&T, regarding its application for Overseas Dataphone. However, that letter merely required AT&T to include:

> "(a) the specific countries (correspondents) which have agreed to, refused to and, as yet, not decided to permit the use of the MTS network for other than voice transmission and
>
> (b) the terms, and if possible, a sample, of an agreement or arrangement with a foreign correspondent." (emphasis added)

Moreover, merely because the Commission required that carrier arrangements with foreign correspondents "be made and submitted prior to our granting the carriers' applications" for Overseas Dataphone Service (57 FCC2d 705, at 712; emphasis added) does not mean that such arrangements are a prerequisite to the grant of every Section 214 application. Most assuredly it does not support the argument of ITT and WUI that a formal agreement is required before such an application can even be accepted.

The fact that the BPO has not chosen to enter into a formal agreement with Telenet at the present time is perfectly understandable: Telenet is not an existing international common carrier, and its application to become such a carrier was predictably to be opposed by the existing international carriers, each of whom is a correspondent of the BPO. Perceiving that the question of Telenet's certification as an international carrier involved a policy matter within the jurisdiction of the Federal Communications Commission, the BPO understandably chose not to give the appearance of intruding itself into the deliberations of the Commission by entering into a formal agreement with an entity not yet found by the Commission to be an eligible international carrier. As stated in its May 25 letter,

> "The Post Office did not consider it appropriate to make any proposals in relation to how the international facilities should be provided to interconnect with the Post Office, in the absence of any agreement between Telenet and any of the recognised international carriers in the U.S."

Telenet obviously has no agreement with any of the recognized international carriers. Nonetheless, the BPO has clearly stated its desire to achieve some type of interconnection with Telenet's domestic network, and has addressed itself to the nature of the rate structure which it contemplates. Given that Telenet is not yet an international carrier, it is not believed reasonable to expect more of the BPO or of Telenet.

C. ITT's "Contingent Motion For Extension of Time" Should Be Dismissed

As contingent relief, ITT requests that the time for opposing Telenet's application be extended for a period of thirty days after Commission action on its "Request for Dismissal". ITT provides absolutely no support for such a request, which is in any event procedurally inappropriate. ITT's request is patently designed to delay the consideration of Telenet's application. Telenet has heretofore acquiesced in an extension requested by RCA Global Comminications, Inc., to June 23 - thirty days after Telenet's application was listed on a Public Notice, and fifty days after each of the international carriers was served by Telenet with a copy of the application. Such time is, we submit, more than ample for ITT (and other parties) to formulate a position on the merits of the application.

WHEREFORE, the premises considered, the requests of Western Union International and ITT World Communications for rejection or dismissal of Telenet's application must be denied, and ITT's contingent motion for an extension of time be dismissed or denied.

Respectfully submitted,

TELENET COMMUNICATIONS CORPORATION

By: ______________________
Philip M. Walker
Vice President and General Counsel
Telenet Communications Corporation
Suite 800
1050 17th Street, N.W.
Washington, D.C. 20036

By: ______________________
Donald E. Ward
Law Offices of Donald E. Ward
Suite 840
1050 17th Street, N.W.
Washington, D.C. 20036

June 15, 1976

Its Attorneys

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION)
)
Application for Authority to Extend) File No. I-T-C-2634
Packet-Switched Data Communications)
Service from the Continental United)
States to the United Kingdom and)
Points Beyond)

COMMENTS IN SUPPORT OF ITT PETITION

RCA Global Communications, Inc., (RCA Globcom) hereby supports the "Petition For Rejection" filed in the above-captioned matter on June 7, 1976 by ITT Worldcom Communications, Inc., (ITT Worldcom)*.

Essentially, ITT requests that the subject Application be rejected on the ground that the proposed Telenet service cannot be implemented, absent an appropriate operating agreement with the pertinent foreign correspondent, the British Post Office (BPO). No such agreement currently exists, and there appears to be little likelihood that one will be entered in the near future in view of the May 25, 1976 BPO "clarification letter" to Telenet, a copy of which is attached to the ITT Petition.

---

*/ The full title of this pleading is "ITT World Communications, Inc.'s Petition for Rejection (And Contingent Motion For Extension of Time)".

Telenet apparently misconstrued the intent of the BPO, insofar as the latter made known a desire to obtain access to U.S. data networks in behalf of U.K. customers. This misunderstanding is so basic in degree that what Telenet has interpreted to be an "offer" to it by the BPO to interconnect for direct or joint service was, in reality, a mere invitation to propose a means by which U.S. market access might be achieved for BPO customers. Thus, the pending Telenet Application is predicated upon a set of circumstances substantially different than that actually existing.

We note that public notice of the Telenet Application was given prior to the date of the BPO "clarification letter". Hence, Commission staff could not have known at the time notice was afforded that so significant a defect tainted the subject Application. In this regard, F.C.C. Report No. I-233, the one noticing the subject Application, provides as follows:

> "All applications listed are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's Rules, Regulations and other requirements." *

We submit that developments herein since the issuance of public

---

* In comparable language pertaining to Section 214 Applications, among others, the Commission has stated that it:

> "reserves the right to return any of those applications, if upon further examination, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies". See, e.g., Addendum to FCC Report No. 808, June 1, 1976.

notice fully warrant dismissal and return of the subject Telenet Application at this juncture.

Absent an operating agreement, a condition precedent to the provision of Telenet service as proposed, it would serve no useful purpose for Telenet, other affected parties and Commission staff to pursue the subject Application further at this time. The diversion of resources necessary to consider and address the substantial and wide-ranging public interest questions raised in the Telenet Application clearly would be unwarranted as premature in the circumstances.

For all the reasons hereinabove set forth, as well as those established in ITT Worldcom's "Petition to Reject", we hereby request that the Telenet Application of May 4, 1976 be dismissed and returned.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

/s/ Francis J. DeRosa (DJE)
Francis J. DeRosa
60 Broad Street
New York, New York 10004

/s/ Donald J. Elardo
Donald J. Elardo
2030 M Street, N.W.
Washington, D. C. 20036

Its Attorneys

Dated: June 15, 1976

Telenet Communications Corporation 1050 17th St. N.W. Wash. D.C. 20036 202/6[illegible] 7[illegible]

Philip M. Walker
Vice President & General Counsel

June 18, 1976

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
Washington, D. C. 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond.

File No.: I-T-C-2634

Dear Mr. Mullins:

This letter is intended to clarify the above-referenced Section 214 application in several respects, in light of a post-filing exchange of correspondence between Telenet and the British Post Office (BPO).

By letter to Telenet dated May 25, 1976, the BPO has expressed concern that there be no misunderstanding as to the nature and extent of its agreement with Telenet embodied in its April 21, 1976 letter and Telenet's April 30, 1976 response, both of which were attached to Telenet's application. A copy of the BPO's May 25 letter and Telenet's response of this date are enclosed as Attachments 1 and 2 hereto. In the initial exchange of correspondence, it was not the intent of either the BPO or Telenet to suggest that Telenet had been selected by the BPO as its "chosen instrument" for the implementation of packet-switched data communications service between the U. S. and the U. K., nor was it either party's intent to represent that a formal operating agreement had been reached between the two parties. It is not believed that Telenet's above-referenced application can be reasonably construed as manifesting such a representation, but to eliminate any possible misunderstanding on that point, it is hereby expressly stated that no such formal operating agreement exists.

The exchange of correspondence between the BPO and Telenet submitted with the application and with this letter does, however, establish that:

a) The BPO "wishes to provide access for its customers to the Telenet Packet Switched Data Communications Network in the United States and similarly to allow access for Telenet customers in the United States to customers in the United Kingdom" (BPO Letter, April 21, 1976);

b) The BPO is "prepared to consider any specific proposals for the international interconnection with the Telenet domestic network" (BPO letter, May 25, 1976);

c) The BPO "did not consider it appropriate to make any proposals in relation to how the international facilities should be provided to interconnect with the Post Office, in the absence of any agreement between Telenet and any of the recognised international carriers in the U. S." (BPO letter, May 25, 1976).

Since Telenet proposes by the referenced application to become a new type of international common carrier, it is both understandable and appropriate that the BPO would defer the formalization of agreements with Telenet until after this Commission has certificated Telenet to offer the proposed international service. The BPO's relationships with the United States Government as well as with the existing international carriers require that it maintain an impartial stance as to any U. S. policy or procedural matters.

It is not believed that the absence of a formal agreement between Telenet and the BPO at this point presents any barrier to favorable consideration by the Commission of Telenet's application, for a contrary position would seem to require a conclusion that the Commission is forever barred from authorizing new international carriers.

Another matter raised in the BPO's May 25 letter, concerning the nature of the physical circuit facilities to be used by Telenet and the BPO in effecting the proposed service, requires clarification. In its application, Telenet proposed to obtain and utilize initially two 9.6 kilobit per second (Kbps) satellite half-circuits, and subsequently to upgrade each circuit to 50 Kbps capacity when traffic warranted. Both the 9.6 and 50 Kbps circuits were proposed to be diversely routed, with one circuit in each case routed through the Etam earth station and the "Primary" Atlantic satellite, and the other circuit routed through the Andover earth station and the "Major Path" Atlantic satellite. It now appears that 50 Kbps circuits will not be available via the "Major Path" Atlantic satellite within the time frame described at Footnote 3 (page 10) of Telenet's application: Despite informal advice from COMSAT that such service would be available from the Andover earth station by the third quarter of 1976, Telenet has since been advised by the BPO, in its May 25 letter, that it has "no current plans which would enable it to establish such 50 Kbps circuits via the Atlantic major path satellite." Thus, Telenet would have no objection to deferral by the Commission of grant of authority for the requested 50 Kbps "Major Path" circuit until the necessary transmission facilities are available via the Major Path satellite. In the interim, should the growth of traffic require upgrading of circuit capacity, Telenet anticipates that it would seek supplemental Section 214 authority to obtain other facilities as appropriate.

The BPO has also advised Telenet that it wishes to consider the use of transatlantic cable as well as satellite transmission facilities for the proposed packet-switched service. At such time as Telenet and the BPO determine the appropriate cable facilities to be utilized, Telenet would request supplemental Section 214 authority to acquire suitable cable half-circuit(s) on a lease or IRU basis. It is not expected that such utilization of cable facilities would have any material effect upon the proposed service offering or rates therefor, or -- except for a possible several-month delay in the activation of one of the proposed 9.6 Kbps satellite circuits -- upon Telenet's utilization of the satellite facilities for which authorization has been requested. Therefore, no amendment of Telenet's pending application appears necessary on this account.

If there are any questions on this matter, please communicate with the undersigned.

Respectfully submitted,

Philip M. Walker

Philip M. Walker

Attachments (2)
cc: Attached Service List
PMW/tbm

RECEIVED

JUN 1 1976

External Telecommunications Executive

POST OFFICE

ALDER HOUSE
1 ALDERSGATE STREET
LONDON EC1A 1AL

Telephone:
01- 432 4923
Telex: 21601 (POSTE LDN)

In any reply please quote:
ET1

Your reference:

Dr L G Roberts
Telenet Communications Corporation
1666 K Street, NW
Washington DC 20006
USA

25 May 1976

Dear Dr Roberts

Thank you for your letter of 30 April and for sending me a copy of your letter of 4 May to the Chairman of the Federal Communications Commission and a copy of your application to the Commission of that date.

I regret that there seems to have been some misunderstanding of my letter of 21 April 1976 as this was not an offer by the British Post Office to establish a direct interconnection between Telenet's public packet switching network in the United States and the Post Office's packet switching facilities in the United Kingdom on the lines described in your application to the FCC. The letter expressed a desire for the provision of facilities to allow Post Office customers to be able to gain access to the domestic value added network operated by Telenet. The Post Office did not consider it appropriate to make any proposals in relation to how the international facilities should be provided to interconnect with the Post Office, in the absence of any agreement between Telenet and any of the recognised international carriers in the US.

In relation to your application to the FCC, I feel I must emphasise, as I did to the authorised international carriers in the US, that as far as the British Post Office is concerned, we have no agreement with Telenet Communications Corporation to establish a direct service nor to make a joint service offering. We are prepared to consider any specific proposals for the international interconnection with the Telenet domestic network but it would be erroneous to conclude that we have reached any formal agreement. In particular, with relation to paragraphs 10 and 11 of Section II of your application to the FCC, the British Post Office has not agreed to furnish and operate matching facilities between United Kingdom and the Atlantic communications satellites as specified in your paragraph 10. In my letter of 21 April, I indicated that we envisaged the establishment of two diversely routed circuits to operate at 9,600 bits per second. I did not agree that both circuits should be routed via the Atlantic communications satellites nor that there should be two circuits operating at 50,000 bits per second. Indeed, the British Post Office has no current plans which would enable it to establish such circuits via the Atlantic major path satellite.

/I think

I think it would be helpful to clarify further the British Post Office position with regard to the development of its packet switched data services. It is proposed to establish an international packet switching gateway in the United Kingdom to be in service in about three years time to provide international packet switched data communications services to all countries, both within Europe and elsewhere, suitably equipped to operate in this manner. This gateway would provide access, via appropriate means, to potential customers in the United Kingdom and in due course interconnection to the national packet switched network which it is hoped will follow the experimental network currently being established.

In the meantime we are considering interim arrangements for the establishment of a packet switched data communications service with the United States on this expedient basis; one which can develop into and be absorbed by the major gateway described above. It is expected that any expedient solution would be based upon the CCITT standards currently being developed. Therefore, because of basic differences in protocols and standards it is not expected that the interim arrangement would be interconnected with the domestic Experimental Packet Switched Service (EPSS) opening this year in the United Kingdom. Instead our national domestic connections to the service with the United States would be provided using the existing public networks in the United Kingdom or by special direct connections, depending upon the expedient arrangements eventually developed. It is hoped that whatever interim measures are adopted, they will be able to provide access for UK customers to other domestic data networks in the United States in addition to Telenet.

In view of the apparent misunderstandings referred to above, which were evident from numerous comments made to me during my recent visit to the ICA Conference in Washington, and from press coverage of your filing, I would be grateful if you would draw the clarifications set out in this letter to the attention of the FCC. As with my previous letter, I am sending copies to my colleagues in other CEPT Administrations and to our present correspondents in the United States.

Yours sincerely

M L FORD

ATTACHMENT 2

Telenet Communications Corporation 1050 17th St. N.W. Wash. D.C. 20036 202/637-7[illegible]

Lawrence G. Roberts,
President

June 18, 1976

Mr. M. L. Ford
External Telecommunications Executive
British Post Office
Alder House
1 Aldersgate Street
London EC1A 1AL
United Kingdom

Dear Mr. Ford:

Thank you for your letter of May 25 clarifying your position on the manner of providing access from the United Kingdom to the Telenet packet network in the United States.

We certainly understand that your position, as stated in your April 21 letter, was not intended as choosing Telenet as your correspondent in the United States or as otherwise constraining the Federal Communications Commission in reaching its determination as to the most effective means of offering international packet switched service for the United States, or whom it should authorize to provide an interconnection between Telenet and the United Kingdom. Our application to the FCC for authority to interconnect directly with the United Kingdom was not intended by Telenet, and should not be interpreted by others, as indicating that direct interconnection was the only option permitted by your letter, but simply as our request that the FCC authorize the service directly in what we believe to be the most economic and efficient method. It should be clear to all concerned that, were the BPO to enter into a formal operating agreement with Telenet prior to Telenet's certification by the FCC as an international carrier, such might be construed as an intrusion into the FCC's jurisdiction. Hopefully, this exchange of correspondence has clarified this matter, and eliminated any doubt that it is your desire to avoid any appearance of seeking to influence the FCC in formulating its position as to the public interest considerations pertaining to the proposed U.S. - U.K. packet switching service.

With respect to the circuits which were proposed to interconnect the United Kingdom and the United States, we unfortunately assumed the availability of 50 Kbps single channel per carrier equipment on the "Major Path" Atlantic satellite. We regret this oversight, and are attaching a copy of our letter to the FCC of this date reflecting the unavailability of such 50 Kbps facilities at the present time, and also recognizing your desire that transatlantic cable as well as satellite facilities be considered. At such time as we jointly determine the appropriate cable facilities to be utilized, we would request supplemental authority from the FCC for the acquisition of one or more cable half-circuits, in addition to the satellite facilities for which our FCC application has already been filed.

While we are proposed 9600 bps channels initially, as the usage expands we expect that it would be both technically advantageous and more economic to use the 50 Kbps satellite capability even if it is only available on the "Primary" Atlantic satellite. Obviously, other options would also be available, and it is unnecessary at this time to establish these plans in detail.

I am indeed sorry if any of your correspondents or the press construed your letter or our filing as implying that Telenet and the British Post Office had established a formal operating agreement prior to FCC approval of our application. I hope that this exchange of correspondence corrects any such misconceptions.

Sincerely,

Lawrence G. Roberts
President

Attachment
As stated

Law Offices of Donald E. Ward

Suite 840
1050 Seventeenth Street
Northwest

Washington, D.C.
20036

(202) 833-1717

July 1, 1976

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Telenet Communications Corporation:
File No. I-T-C-2634

Dear Mr. Mullins:

This is in response to the letter of June 23 to the Commission from TRT Telecommunications Corporation, regarding the application of Telenet Communications Corporation for authority to provide packet-switched data communications service between the United States and the United Kingdom, File No. I-T-C-2634.

In its letter, TRT points out that ITT World Communications, Inc., and Western Union International, Inc. have both urged the rejection of Telenet's application on the ground that Telenet has not yet entered into a "formal agreement" with its proposed correspondent, the British Post Office. TRT states its belief that it should not "be required at this time to take a position on the basis of a hypothetical service formulated by Telenet without the concurrence of its proposed UK correspondent," and it "requests that it be granted a reasonable opportunity to submit its substantive comments after the question of Telenet's operating arrangements with its UK correspondent has been clarified."

Since neither Telenet nor its counsel was advised by TRT that its request was being filed, TRT's letter is subject to dismissal for its failure to comply with Section 1.46(c) of the Rules, which requires that

> "If a motion for extension of time in which to file papers in proceedings other than notice and comment rule making proceedings is filed less than 7 days prior to the day for filing the papers,

> the party filing the motion shall (in addition to serving the motion on other parties) orally notify other parties and Commission staff personnel responsible for acting on the motion that the motion has been (or is being) filed."

In any event, a brief review of the procedural history of Telenet's application will demonstrate that the TRT request is totally devoid of merit, and appears to have been presented solely in the interest of delay.

Telenet's application was filed with the Commission on May 4, 1976, and copies thereof were served on that date upon TRT Telecommunications Corporation, ITT World Communications, Inc., RCA Global Communications, Inc., and Western Union International, Inc., in addition to other potentially interested parties. Twenty days later - on May 24 - the application was accepted for filing and listed on the Commission's Public Notice Report No. I-233. That Notice stated that "interested parties may file comments with respect to the above-described applications within 14 days of the day of this Public Notice." On May 28, 1976 RCA requested an extension of time to at least June 23 (30 days after the May 24 Public Notice), relying upon the recent amendment to Part 63 of the Commission's Rules which had not yet become effective. Telenet consented to the RCA request, and until the morning of June 24, assumed that the request had been granted as made, and that petitions were due on June 23. On June 24, Telenet was advised for the first time*/ that by letter of June 4, 1976 the Bureau had granted RCA's request and extended the time for filing petitions to June 28, 1976 -- five days more than had been requested by RCA, and fifty-five days after the IRC's were served with Telenet's application.

In the meantime, Western Union International filed a letter on June 7, 1976, urging dismissal of the Telenet application on the theory that it had been improperly accepted for filing, in view of the fact there did not exist a "formal agreement" between Telenet and the British Post Office. On the same date, ITT World Communications filed a "Petition for Rejection (and Contingent Motion for Extension of Time)", similarly premised on the lack of a formal agreement between Telenet and the BPO. On June 15, 1976, RCA Global Communications filed "Comments in Support of ITT Petition", echoing ITT's arguments. On the same date - June 15 - Telenet filed its Opposition to WUI's request for dismissal and to ITT Worldcom's petition for rejection, pointing out that neither the Act nor the Commission's Rules required a "formal agreement" between a U.S. carrier and its proposed foreign correspondent as a prerequisite to favorable consideration upon such an application, much less as a prerequisite to its acceptance for filing. The cases cited by ITT Worldcom and WUI in support of their theory were discussed and distinguished.

---

*/ Although copies of the Bureau's June 4 letter were sent to each of the international record carriers, including TRT, no copy was sent to Telenet or its counsel.

Thereafter, on June 18, Telenet forwarded to the Commission an exchange of correspondence between the British Post Office and itself, in the interest of clarifying Telenet's application with particular reference to the extent to which Telenet and the BPO had an "agreement". Telenet pointed out therein that the BPO - in its April 21, 1976 letter - stated that it "wishes to provide access for its customers to the Telenet Packet-Switched Data Communications Network in the United States and similarly to allow access for Telenet customers in the United States to customers in the United Kingdom;" and that, in its May 25 letter, the BPO stated that it is "prepared to consider any specific proposals for the international connection with the Telenet domestic network," but "did not consider it appropriate to make any proposals in relation to how the international facilities should be provided to interconnect with the Post Office, in the absence of any agreement between Telenet and any of the recognised international carriers in the U.S."

It now appears that none of the international record carriers, or for that matter, any other party, has filed a petition to deny the Telenet application within the extended period, expiring June 28, 1976, which was allowed by the Commission's letter of June 4.

Instead, the international record carriers appear to be content to rest their case on the question of whether a "formal agreement" is a prerequisite to an acceptable application. While Telenet believes that that argument is non-meritorious, and has been successfully rebutted in Telenet's June 15 "Opposition", it does not challenge the right of the IRCs to make such an argument. However, Telenet does strenuously object to what appears to be an emerging tactic of the IRCs: To attempt to delay as long as possible the consideration of the merits of Telenet's application through piecemeal procedural arguments. It is submitted that such tactics disserve the public interest, and constitute an abuse of the Commission's processes.

There are attached hereto copies of communications which have been filed with the Commission in support of Telenet's application from a number of potential users of the proposed service, demonstrating an urgent need for its prompt establishment, and the inadequacy of the existing transatlantic data services. While the private interests of the IRCs are no doubt served by the delay which is being perpetuated through the conduct noted above, the public interest can only suffer through such delay.

Accordingly, Telenet urges that the Commission reject the letter request of TRT, and in so doing, inform each of the international record carriers that the time for filing comments with respect to the instant application of Telenet has passed. Failure by the Commission to take such affirmative action at this point can only invite further abuse of its processes, to the continued detriment of the public interest.

Very truly yours,

Donald E. Ward
Counsel for
Telenet Communications Corporation

cc: Attached
service list

Bechtel International Corporation

Engineers—Constructors

Fifty Beale Street
San Francisco, California 94105

Mail Address: P. O. Box 3965, San Francisco, CA 94119

June 23, 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond

File No.: ITC-2634

Dear Mr. Hinchman:

The Bechtel International Corporation presently subscribes to Telenet's domestic services. Bechtel also has significant business interests overseas and throughout the world, including the United Kingdom and Europe. On the basis of our domestic experience with Telenet, we believe that the international packet switching network connection proposed by Telenet could be of substantial benefit to Bechtel. It is our opinion that the interconnection of the U.S. Telenet network with the European packet switched networks would provide a practical vehicle for Bechtel terminal users in Europe to communicate with Bechtel computers in the U.S. We feel the conventional communications options now available are impractical principally because of high costs. Accordingly, we express our support for Telenet's international packet switching application.

R. A. Burke
Data Communications Manager

RAB:lp
cc: P. J. Harrington

INTERACTIVE
SCIENCES
CORPORATION

60 [illegible]
BRAINTREE - MASSACHUSETTS [illegible]
[illegible]

June 23, 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Dear Mr. Hinchman:

RE: Application of Telenet Communications Corporation for Authority to Extend Packet-Switching Data Communications Service from the Continental United States to the United Kingdom and Points Beyond

File No. ITC-2634

Our organization has recently become aware of the aforementioned application by Telenet Communications Corporation which is currently before your Commission. As a user of Telenet's existing domestic service, we wish to respectfully voice our support for the proposed extended service.

Interactive Sciences Corporation is a computing firm offering interactive time-sharing services largely throughout the Northeastern United States from a main office in Braintree, Massachusetts. We have found the Telenet Communications Network to be an efficient and low-cost vehicle for expanding our domestic markets. In the matter of extending our services to overseas customers, such a vehicle would prove to be invaluable.

Up to this point in time our organization has considered overseas services to be totally unfeasible. Although several foreign concerns have expressed interest, the prohibitive cost of existing overseas data communications facilities coupled with the interactive nature of our time-sharing services has deadened any progress in that area. The establishment of the proposed Telenet scheme would not only overcome the cost barrier but would help to solve a multitude of difficulties steming from worldwide technical incompatibilities.

Page Two
Mr. Walter Hinchman
Federal Communications Commission
June 23, 1976

In our opinion, the proposed Telenet packet-switching service would not only represent a significant step forward in worldwide data communications but would also add a new dimension to international time-sharing service capabilities

Very truly yours,

INTERACTIVE SCIENCES CORPORATION

Thomas J. Dunn

Thomas J. Dunn
President

TJD/kb

Aeroquip

AEROQUIP CORPORATION • JACKSON, MICHIGAN 49203

A subsidiary of Libbey-Owens-Ford Company

June 24, 1976

Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: File No. I-T-C-2634

Dear Sir:

I am writing to comment upon the recent application by Telenet Communications Corporation for extending its domestic packet-switching service to the United Kingdom.

As a user of leased full period transatlantic communications services, we feel that the present tariff structures discourage multi-national corporations and those U.S. companies with overseas affiliations to economically exchange digital data. As you know, the cost effectiveness of satellite communications and the advanced technology associated with that form of service has not been passed through to the users of international services. By providing a shared data communications resource, Telenet could provide a more cost justifiable form of telecommunications for the low to medium traffic customers.

The entire concept of commercial packet-switching, which eminated from the Government's own Advanced Research Projects Agency, offers an exciting alternative to the distance dependent communications facilities of the past.

I urge you to react favorably to the Telenet proposal.

Thank you.

Sincerely,

Howard M. Selland
Data Processing Manager

HMS/pz

cc: Mr. Philip M. Walker
Vice President & General Counsel
Telenet Communications Corporation
1050 -17th Street, N.W., Suite 850
Washington, D.C. 20036

FAIRCHILD [illegible]
[illegible]

21 June 1976

[illegible] JUN 2[illegible] 1976

Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: File No. I-T-C-2634

Dear Sir:

I understand that on May 4th, Telenet Communications Corporation filed a Section 214 application with the Federal Communications Commission to extend its domestic packet-switching service to the United Kingdom. Fairchild Camera and Instrument Corporation is presently a significant user of trans-Atlantic telecommunications services and we see this new service as providing an advanced and economical alternative to our present international communications network.

Fairchild's future plans include significant expansion of international data communications and packet-switching is one of the techniques we've been counting on to improve price-performance to a more justifiable level.

We will appreciate your early favorable action on this application from Telenet.

Sincerely,

Burleigh D. Cook
Director, Management
Information Systems

BDC:tg

cc: Philip M. Walker
Vice President and General Counsel
Telenet Communications Corporation
1050-17th Street, N.W., Suite 850
Washington, D.C. 20036

Scientific
Time Sharing
Corporation

APLPLUS

7316 Wisconsin Avenue, Bethesda, Maryland 20014 • (301) 657-8220

June 3, 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communication Service From the Continental United States to the United Kingdom and Points Beyond

File No. ITC-2634

Dear Mr. Hinchman:

Scientific Time Sharing Corporation strongly supports the subject application and respectfully recommends the Commission's approval thereof.

Scientific has been offering computer timesharing and network information services within the United States for almost seven years. Until the public availability of Value Added Networks (VANs) such as TELENET and TYMNET in the past two years, we were forced to construct and operate a private network to serve customers in different parts of the country.

We were an early and enthusiastic user of both VANs and plan to increase our usage of such facilities where it is more cost-effective than maintaining our own network. In a recent internal study we concluded that 50% of our total traffic would be best handled through TELENET, based on quality and cost considerations. Changes in tariffs by the common carriers, primarily AT&T, MCI and DATRAN, as well as TELENET could change that mix.

The remainder of the traffic is handled on our own network. That network is based on leased analog and digital circuits from AT&T, MCI, and DATRAN for inter-node communication. Commercially available multiplexors, including minicomputer-based statistical multiplexors and local business lines and datasets in STSC-maintained sites around the U.S. complete the network. A full-time staff based in Bethesda maintains, extends, and operates the STSC network.

Our present customer base is primarily within the continental United States, with some usage in Canada. In 1974 we established a subsidiary in the United Kingdom, with the intention of expanding our business into Europe. Under that plan, we would have leased a voice-grade transatlantic circuit between London and Washington, D.C., and installed multiplexing equipment at both ends. This extension of our network would have allowed U.K. customers to use our computer facility in Bethesda, Maryland in the same way as users in the U.S. At that time, the cost of the leased circuit was approximately $10,000 per month, exclusive of the cost of terminal equipment such as high-speed modem and multiplexors, and business lines and datasets at the U.K. end.

In late 1974, we decided to close our newly-opened London office and cancel our orders for the transatlantic circuit before we had begun to do business there. A major factor in that decision was the substantial operating expense of the communication facility. That expense far exceeded all other projected expenses for the U.K. operation. Had the economics of providing reliable overseas communication been less onerous, our company very likely would have taken a different decision at that time.

Several of our valued customers are international in scope, particularly in Western Europe. To date our company has been unable to respond to requests to provide services to overseas affiliates of our U.S. clients. In this way, we have been unable to compete effectively with some of the largest companies in our business, although we are able to compete within the continental United States.

We feel that extension of TELENET's Packet Switched Data Communication Service to the U.K., and eventually to other countries, would allow Scientific Time Sharing to take advantage of many of the business opportunities we are currently forced to pass up. In particular, we could seriously consider reactivation of our U.K. subsidiary in the foreseeable future.

The primary advantages of such a service to us are quality and cost, though the two are closely related. Without a data communications service of the kind proposed by TELENET, we can provide communications overseas only by making a substantial fixed-cost commitment to a leased channel and expensive terminal equipment. Many months of successful marketing would be required to bring hourly operating costs of that arrangement within a reasonable range. By contrast, TELENET's proposal would allow us to begin service immediately in the U.K., principally for affiliates of our U.S. customers. The cost of that service would be strictly proportional to usage. Such service would therefore be self-supporting. Another favorable aspect of the cost is that we would not be required to have an agent in each U.K. city to assure maintenance of the equipment from that end.

In summary, Scientific Time Sharing Corporation would benefit from the service proposed by TELENET. Extension of the service to other European countries and Japan would further increase its attractiveness. I urge the Commission's prompt consideration and approval of this application.

Sincerely,

Philip S.

Philip S. Abrams
Vice President

PSA:ld
cc: Philip Walker
Vice President and General Counsel
Telenet Communications Corporation
1050 17th Street, N.W.
Washington, D.C. 20036

FIRST DATA 400 TOTTEN POND ROAD / WALTHAM, MASSACHUSETTS 02154 / 617-890-6701

June 4, 1976

Mr. Walter Hinchmana
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond

File No.: ITC-2634

Dear Mr. Hinchman:

As a commercial timesharing service, First Data has a strong interest in Telenet's application to extend service to the United Kingdom and points beyond. We strongly favor approval of the application for the following reasons:

- We currently have United States-based customers which have businesses which would like to use our system from Europe. Presently, however, the data communications is both costly and inconvenient. Consequently, one such customer who could receive timely reports on a packet-switched network settles for the much-diminished utility of mailed reports.

- Our timesharing computers are dedicated primarily to interactive use (rather than batch processing) and therefore depend on people and working hours. Extending business into new time zones can increase the profitability of our machinery.

- Though we currently are not prepared to actively market our services in Europe, the decision point to do so is much closer given the existence of a Telenet-type network. The communications entry cost is prohibitive unless a packet network exists.

Lastly, we see a less tangible benefit for Telenet's immediate involvement in international packet-switching. The international packet-switching idea has come of age and we feel that the technology and experience that Telenet can bring to bear in the early stages may be vital to the framework and maturation of the network.

Sincerely,

FIRST DATA CORPORATION

Robert A. Swithers
Manager, Systems Development

cc: Stuart Mathison
Vice President
Telenet Communications Corporation

BOX 794 HANOVER, N. H. 03755 603/643-4672

DTSS
INCORPORATED

10 June 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond.

File Number: ITC-2634

Dear Mr. Hinchman:

DTSS Incorporated endorses the application of Telenet to provide services to Europe.

DTSS Incorporated is a computer software company. Our business is licensing the use of time-sharing operating system software called the Dartmouth Time-Sharing System (DTSS). This DTSS software was originally developed by Dartmouth College and rights transferred to DTSS Incorporated by Dartmouth, which holds all the common stock of the company. Many of our customers are large industrial companies which buy a license to use DTSS software, buy a suitable computer with which to use the software, and then operate an intracompany time-sharing computer system. The availability of Telenet services makes it possible for such a company with many different physical locations to access a central time-sharing computer reliably and inexpensively. Because DTSS software supports the host interface protocol for Telenet, such a company can connect its DTSS time-sharing system to Telenet with a minimum of expense and communications expertise.

The availability of Telenet has thus had a favorable impact on sales of DTSS software licenses. The economic impact on a DTSS/Telenet customer is not limited simply to savings of communications costs, but to savings due to the increased functionality and efficiency of the Dartmouth Time-Sharing System operating on an in-house, centrally controlled time-sharing computing facility.

Some DTSS customers have need to transmit information between their European locations and their U.S.-based DTSS time-sharing system. Our company worked with The Singer Company to place a terminal in the United Kingdom into operation with a time-sharing computer in Wayne, New Jersey. Singer rents a satellite channel, and much time, trouble, and expense was devoted to making a sub-channel of that transatlantic channel work properly with DTSS -- to the extent of having to send a man to London to assist. Were Telenet service available from London, it would be instantly utilized for this application.

Dartmouth College has cooperated with Hatfield Polytechnic, outside of London, in a variety of projects including the standardization of the computer language BASIC jointly by the American National Standards Institute and the European Standards Institute. This project could go forward more rapidly if data could conveniently be exchanged between Hatfield Polytechnic and Dartmouth College. A previous attempt to have Hatfield's and Dartmouth's computers interact was dropped because of the complexity and expense of a transatlantic dataphone connection.

Telesystemes, a computer service bureau in Paris, France, has a license to use DTSS, to be used beginning late this year. Telesystemes already has communications channels between France and the United Kingdom. DTSS Incorporated will have need to access Telesystemes' DTSS time-sharing system and will probably be able to do this using the proposed Telenet service to London. (I understand that Comshare, of Ann Arbor, Michigan, was unable to give interactive assistance to its licensee in the United Kingdom because of the complexity of transatlantic dataphone calls.) Telesystémes itself is directly involved in TRANSPAC, the French packet-switched network, and looks forward to using DTSS software and the X25 interface to provide time-sharing services in France. Approval of the Telenet application to extend services to the United Kingdom will therefore find sufficient expertise already in place in Europe to make use of the facilities provided.

I would be happy to provide additional information should you request it.

Very truly yours,

RFHargraves, Jr

Robert F. Hargraves, Jr.
President

pl

cc: Philip Walker
Vice President General Counsel
Telenet Communications Corporation

EDUCOM

INTERUNIVERSITY COMMUNICATIONS COUNCIL, INC.
Post Office Box 364 · Rosedale Road, Princeton, New Jersey 08540 · Telephone 609 [illegible]-7575

June 8, 1976

Mr. Walter Hinchman
Chief, Common Carrier
 Bureau
Federal Communications
 Commission
Washington, D.C. 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond.

File No.: ITC-2634

Dear Mr. Hinchman:

The Planning Council on Computing in Education and Research is a consortium of twenty-two leading universities that are engaged in a cooperative effort to develop a computing network that permits wiedespread resource sharing. The attached brochure gives some of the details of the Council.

Much of the potential resource sharing that a network would permit is international in scope. Most of the services that will be offered over the network will be highly specialized -- such as special computer programs for spectral analysis or access to a large-scale econometric database. Current experience with existing networks -- primarily ARPANET serving the defense community -- strongly supports the arguments for collaborative work among geographically dispersed research workers. An international network could substantially strengthen multinational educational and research projects engaged in by widespread institutions.

For these reasons, the Planning Council is following with keen interest Telenet's application for a packet-switching link with Europe. The availability of reliable and low-cost communications with European institutions would, we think, be of considerable value in promoting international resource sharing of computing services.

Sincerely,

James C. Emery
Vice President

Enclosure

cc: Philip Walker
Vice President and
General Counsel
Telenet Communications
Corporation

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION) File No. I-T-C-2634
)
Application for Authority to Extend Packet-)
Switched Data Communications Service)
from the Continental United States to the)
United Kingdom and Points Beyond

REPLY

ITT World Communications Inc. (ITT Worldcom) hereby replies as follows to the Opposition of Telenet Communications Corporation (Telenet) to ITT Worldcom's Petition for Rejection:

1. Although Telenet has a threshold legal obligation to show that its proposed "facilities... can and will be used" to implement the subject service,[1] it fails to make any affirmative presentation on this dispositive ground. Instead, Telenet's Opposition is devoted to the defensive and semantic argument that it need not have a "formal" operating agreement with the British Post Office (BPO). This contests too little.

2. It cannot be genuinely disputed that the Commission properly requires an applicant to show, as a prerequisite to Section 214 certification, that it has reached agreement--"formal" or not--with its putative correspondent.[2] After all,

---

[1] ITT Worldcom's Petition for Rejection, p. 3.

[2] For example, the Commission stated less than a year ago that an indication "that the BPO is 'ready to open negotiations'... is not sufficient basis for a grant of authority to provide service pursuant to Section 214 of the Communications Act. We require, at the very least, indication that the agreement has been reached plus a listing of the material terms of a contract to be signed in t near future." Letter from the Chief, Facilities Division, Acting for the Chief, Common Carrier Bureau, to counsel for the French Telegraph Cable Company, September 12, 1975, FCC File No. I-T-C-2336-3 (emphasis supplied).

it makes no sense to authorize a service that cannot be provided past the mid-point of the ocean. Yet, as is easily illustrated by the following, Telenet does not even have an informal preliminary understanding to operate in conjunction with the BPO:

(a) The BPO Never Made An "Offer" To Telenet--The BPO's May 25th letter expressly disavowed any "offer by the British Post Office to establish a direct interconnection between" Telenet and the BPO, thus conclusively refuting Telenet's representation to the Commission that it had acted to "accept the [April 21] offer of the British Post Office to establish an interconnection" between Telenet and the BPO.[3/]

(b) Without An "Offer", There Could Be No "Agreement"--The BPO's May 25th letter flatly stated it " has not agreed to furnish and operate matching facilities between United Kingdom and the Atlantic communications satellites," thus directly contradicting the representation in the Telenet Application (p. 5) that "the BPO has agreed to furnish and operate matching facilities between the United Kingdom and the Atlantic communications satellites."[4/]

(c) No "Agreement" With Telenet Is Even Contemplated In The Foreseeable Future

The very day after the BPO made its purported "offer" of April 21, 1976, it supplied a copy thereof to ITT Worldcom and, in its covering letter, advised

---

[3/] Application, Exhibit A.

[4/] By letter to the Commission of June 18, 1976, Telenet has finally admitted that, contrary to its earlier "understanding," the BPO had not meant to "suggest that Telenet had been selected by the BPO as its 'chosen instrument'..." So much for the claim that there had been no previous "misunderstanding" on the part of Telenet (Opposition, pp.2-3).

that it "did not wish to prejudge any decisions as to how the international access into the USA should be provided."[5] This, of course, is fully understandable since the BPO's plan to establish an international packet switching gateway will not come to fruition until "*about three years*."[6] In any event, it is the height of naivete to suggest that if the BPO had any present intention to interconnect with Telenet, its "last word" on the subject would have been the explicit disclaimers in its May 25 letter. Contrary to Telenet's claim, the BPO and other foreign administrations have on numerous past occasions entered into operating agreements with U.S. carriers in advance of (and contingent upon) Commission approval, including situations where the contracting carrier has not yet been certificated to serve the area involved.[7]

---

[5] Letter of April 22, 1976 from the BPO to ITT Worldcom, Exhibit 2 hereto.

[6] ITT Worldcom's Petition for Rejection, Exhibit 1 (emphasis supplied).

[7] See e.g. *TRT Telecommunications Corp.*, 46 F.C.C. 2d 1042, 1045 (1974) (UK); *TRT Telecommunications Corp.*, Memorandum Opinion and Order, released Febrary 4, 1976, Mimeo No. 60550,______. F.C.C. 2d________ (UK); *French Cable Telegraph Co.*, Order and Authorization, Released May 27, 1976, Mimeo No. 65537,______ F.C.C. 2d______(UK); *Tropical Radio Telegraph Co.*, 35 F.C.C. 2d 950, 953 (1972) (Italy); *ITT World Communications Inc.*, 19 F.C.C. 536, 537-38 (1969) (Bahamas).

3. The Commission has the statutory duty to assess the public interest, convenience and necessity in the context of *today's* realities. As the Court of Appeals explained in the *Hawaiian Telephone Case*:[8]

> "When the FCC considers an application for certification of a new line, it *must start from the situation as it then exists*, and must apply the statutory standard to determine whether indeed the public convenience and necessity requires more or better service" (emphasis supplied).

The reason for this requirement--to assess the situation "as it then exists"--was correctly stated, in a very recent pleading, by Telenet itself:

> "It is axiomatic that be*fore* the Commission may certify that the public convenience and necessity would be served through grant of an application, it must first know what the applicant proposes, and the applicant's showing of need, costs, and rates must relate to the service proposed." (emphasis supplied).[9]

---

[8] *Hawaiian Telephone Co.* v. *F.C.C.*, 498 F. 2d 771, 775 (D.C. Cir. 1974)

[9] Telenet Petition for Relief, May 7, 1976, pp. 25-26, filed with respect to AT&T's Application for Authorization to Operate Various Digital Channel Groups for Use in the Provision of DATAPHONE Switched Digital Service, FCC File No. W-P-C-778

But there is no way that Telenet's purported showing of needs, costs and rates can be intelligently evaluated if the Commission cannot know when, if at all, the service to which they relate might be implemented.

4. Thus, the Commission cannot even begin to guess whether the tariff charges Telenet proposes in its current application will be reasonable, as required by Section 201 of the Communications Act, in light of economic conditions in 1980, when, perhaps, the service might be initiated. Nor can the Commission make any intelligent finding *now* that the proposed service will meet the requirements of "public need" and "economic justification" in 1980.[10] For example, in a competitive environment,[11] "public need" is measured in terms of "whether there is sufficient traffic to support the addition of another competing direct circuit and upon the effect of the opening of such circuit upon the applicant as well as all other carriers providing service to the public."[12] However, in this dynamic industry, the Commission cannot *now* reliably determine whether the services of existing carriers in 1980, and the then current level of traffic demands, will preclude the necessity of a new entrant such as Telenet.

10/ See Sections 63. 01 (l) (m) of the Commission's Rules and Regulations.

11/ A recent study concluded that "significant competition is likely to develop" with respect to value added services such as that proposed by Telenet. *Outlook for Telenet Communications And The Value-Added Carriers*, Industry Comment Letter Issued by Arthur D. Little, Inc., March 31, 1976, pp. 1, 3-7.

12/ *Mackay Radio & Telegraph Co.*, 28 F.C.C. 231, 239 (1960).

5. Thus, Telenet can claim nothing more than a pious hope--which may never materialize--that at some indefinite future point in time it may reach an agreement with the BPO. In this connection, a strongly analogous precedent [illegible] outright dismissal of the instant application may be found in the Commission's policy statement on Contingent Applications In The Broadcast Services:

> "The Commission's experience has disclosed that the existing policy of accepting 'contingent' applications in the aural broadcast services...has not been satisfactory. Since no action can be taken on such applications pending removal of the contingency, holding these applications in our pending files does not serve any valid public interest. Moreover, experience has shown that such applications consume appreciable staff time, which could be devoted to the processing of other applications. Since many of these applications must be held for long periods of time, it is usually necessary for the applicants to file substantial amendments when the contingencies have finally been resolved.
>
> In view of the foregoing, the Commission has concluded that no additional "contingent" applications...will be accepted for filing from this date."

Similarly, here, there is no sound administrative reason to devote any Staff effort to a time-consuming, but academic, exercise with respect to all the issues Telenet's 47 page filing is likely to raise.

13/ 22 RR 299 (1961).

CONCLUSION

For the reasons stated in ITT Worldcom's Petition for Rejection and herein, Telenet's above-captioned application should be rejected.

Respectfully submitted,

ITT World Communications Inc.

By:

Joseph J. Jacobs/TJF

Joseph J. Jacobs

Theodore J. Fischkin

Theodore J. Fischkin

Its Attorneys
67 Broad Street
New York, New York 10004

Dated: July 2, 1976

POST OFFICE

ALDER HOUSE
1 ALDERSGATE STREET
LONDON EC1A 1AL

Telephone:
01-432 4923
Telex: 21601 (POETE LDN)

In any reply please quote:
EC1

Your reference:

Mr V F Polkolly
ITT World Com
67 Broad Street
New York
NY 10004
USA

April 1976

As part of our continuing study of the market potential for international data services, particularly packet switching services, we have identified a requirement to provide access to the Telenet system in USA.

We have been approached by Dr Roberts of Telenet and the attached letter summarises the results of our discussions. I would point out that we have not concluded an operating agreement with Telenet. As indicated we are anxious to open a service at an early date but do not wish to prejudge any decisions to be made as to how the international access into USA should be provided.

Yours sincerely

M L FORD

Exhibit 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of GRAPHNET SYSTEMS, INC. Application for Authority to Permit Use of Facsimile Services to Communicate With Terminal Devices Located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany.	File No. I-P-C-11 File No. I-P-C-11A

To: The Commission

PETITION TO DISMISS OR DENY

RCA Global Communications, Inc., (RCA Globcom) hereby petitions for dismissal or denial of the above-captioned Graphnet Systems, Inc., (Graphnet) Application for the reasons hereinafter set forth.

Graphnet essentially seeks authority to extend its domestic record services to those European nations named in the above caption. The "vehicle" it intends to use to transit the Atlantic and hence to reach Europe with its services consists of the "facilities of AT&T under its Tariff 263", which international facilities would be "seized" for the periodic transmission by Graphnet of individual or batched messages to relevant European points. (Graphnet Application, at 4). Thus, the services contemplated in the instant

Application, at their very heart, involve the employment by Graphnet of AT&T dial-up long distance (MTS) circuits under AT&T's Tariff F.C.C. No. 263. There is an unqualified assumption by Graphnet that such AT&T service is available to it for its intended operations.*

The unique status of so-called "value-added carriers", of which Graphnet is one, dictates that the most careful consideration be accorded the pertinent tariff or tariffs of the "primary carrier" to which value-added carriers will turn for transmission facilities to incorporate within their public offerings.** As AT&T Tariff No. 263 contains no specific provisions for use of MTS by value-added carriers and, even more significantly, as it does not permit the use of MTS facilities for non-voice transmission to the pertinent European nations, Graphnet may not use AT&T service in the manner proposed in its Application.

Under its existing authorizations, AT&T may not furnish switched data or record service to Europe.*** Its relevant authorizations are restricted to voice communications only. Thus, AT&T cannot furnish to

---

* Graphnet asserts that it will obtain the requisite AT&T international circuits "at the prevailing rates for such service". (Application, at 6). No reference, however, is made to prevailing tariff *regulations* governing the *use* of such circuits.

** Value-added carriers do not construct their own transmission facilities. Rather, they lease these at tariff rates, as would any customer, from appropriately authorized entities, *i.e.*, "primary carriers". Essentially, value-added carriers are no more than mere "customers" of primary carriers with the noteworthy exception that they are permitted to resell an enhanced telecommunications service to their "patrons". See, *e.g.*, pertinent provisions in AT&T Tariffs 259, 260 and 267 pertaining to "composite data service" and "composite data service vendors".

*** Insofar as Tariff No. 263 is involved, such data or record service is termed "Dataphone Service".

Graphnet the vehicle the latter requires to extend its domestic facsimile services to Europe. This fact is reflected in Tariff No. 263 as currently effective. Use of MTS for non-voice transmission therein is limited geographically "on a two point basis between points in the United States, and between points in the United States and points in Alaska, Canada and Hawaii".*

Accordingly, the subject Graphnet Application should be returned on the above ground alone. The Commission cannot make a statutory public convenience and necessity finding when the Applicant seeks to offer a service it may not lawfully provide.

Even assuming arguendo that Graphnet's proposed service to Europe could be provided using AT&T's MTS facilities in the manner set forth in its Application, there are other pertinent considerations which render the instant Application fatally defective. We note that there has been no apparent interaction between Graphnet and pertinent European telecommunications administrations.** Certainly, no representation is made that Graphnet's intended operations in Europe either will be permitted or even are permissible under applicable policies and regulations of such foreign administrations. In this regard, we note a relative dearth of information in the Application concerning the overseas portion of the proposed service. Hence, it is not clear as to who (Graphnet, the overseas administration, or someone else) would operate equipment at overseas points, how document delivery would be achieved, and the manner in which "directly connected" facsimile terminals will be interconnected with the European MTS network or other facilities. We believe information of this nature is essential to Commission consideration and disposition of the instant Application.

---

* AT&T Tariff F.C.C. No. 263, Para. 2.6 Use of MTS for certain non-voice transmission to Puerto Rico, Cuba and Mexico also is permitted.

** It is apparent to us that Graphnet will undertake to market actively its services in the subject European nations. See Application, at 4, n.1.

Other deficiencies afflict the Graphnet Application. We note that its purpose is "to supplement certain of [its] presently authorized facsimile and data communications services...." (Application, at 1, emphasis supplied). Especially in light of the developments explained below, it is not at all clear from the Application whether Graphnet intends "to supplement" its present services in a manner other than by their geographic extension.* This is overwhelmingly troublesome because of the controversy as to what are Graphnet's "presently authorized services",** those in fact it is furnishing, those it would provide if the instant Application were granted, and, in particular, those it seeks to furnish by virtue of its recently filed "Contingent Application".***

---

* A related Graphnet Application speaks not to the "supplement" of services, but merely to their "extension" to Hawaii. See F.C.C. File No. W-P-C-721.

** See In Re Graphnet, 44 F.C.C. 2d 800 (1974).

*** F.C.C. File No. W-P-C-950, Application dated June 2, 1976.

We view Graphnet's existing authorization as narrow, encompassing "facsimile" service defined as follows:

> "A method of communications that enables the image of an input source document to be transmitted over a communications facility, with the generation of an accurate copy of the original source image on a remote receiving device."*

We believe this to be a reasonable interpretation of the original Graphnet Application and the Commission Order granting such Application. Indeed, Graphnet's authorization was limited specifically by the Commission in its direction that:

> "...Graphnet shall not expand its service offering to include any service offering other than the packet-switching facsimile communication services...."**

While we note Graphnet's assertion in its instant Application that it does not seek to provide services which "materially differ" from its presently authorized services, and that it seeks only to extend their "geographic area" of coverage (Application, at 3), we cannot ignore the fact that in its recent "Contingent Application", Graphnet claims that:

> "...its current Section 214 authorization already permits provision of the services described herein." (Contingent Application, at 2)

---

* Graphnet Application, File No. P-C-8586, dated March 9, 1973.

** 44 F.C.C. 2d 802-3.

Those proposed services, we submit, far exceed the restrictions set forth by the Commission in its 1974 authorization, and, moreover, substantially exceed Graphnet claims, including those in the instant Application, previously made as to the scope of its authority.* We thus are concerned with what we view as a "bootstrap effort" by Graphnet to broaden its single Commission authorization to furnish facsimile service. In our "Comments" addressing the Graphnet Hawaii Application, (RCA Globcom "Comments", F.C.C. File No. W-P-C-721, at 8), we stated that we did not expect that the proposed Graphnet service there included, *inter alia*, "computer-to-computer transmission, data terminal-to-data terminal transmission (other than facsimile), public message telegram or Telex service". We no longer can state such view with confidence in light of the instant Application and the supervening "Contingent Application".** In the circumstances, we submit that, absent its warranted summary dismissal of the instant Application, the Commission must address itself to the limitations imposed in Graphnet's sole authorization and must not permit any further *de facto* extension of Graphnet services beyond those authorized by Graphnet's expansive and unilateral interpretations of its authority.

---

* No longer does Graphnet concede that its service authorization merely encompasses "output facsimile terminals". Now, Graphnet speaks to its service authorization as including receiving high speed "digital devices" and "low speed dial-oriented receiving digital terminals". Contingent Application, at 7-8.

** In particular, we must question whether this most recent Graphnet Application seeks to supplement the supplemental authority sought in the instant Application. Specifically, does Graphnet now seek authority to provide "additional digital record communication services" beyond those "data communications services" it seeks authority to furnish via the instant Application?

Finally, we must point out, as we did with respect to the Graphnet Application to extend its service to Hawaii, that were Graphnet permitted to enter and serve the European market, in addition to that within the continental United States, it would obtain an unfair competitive advantage over those licensed voice/record carriers, including RCA Globcom, which are restriced in their authorizations from providing domestic record service and from originating or terminating traffic beyond a limited, few Gateway cities.

In view of the above, we respectfully request that the Commission dismiss the instant Application on the ground that Graphnet service, as proposed, cannot be implemented. In the alternative, we respectfully urge that the Application be denied for the reasons hereinabove set forth.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

/s/ Francis J. DeRosa (By DJE)
Francis J. DeRosa
60 Broad Street
New York, New York 10004

/s/ Donald J. Elardo
Donald J. Elardo
2030 M Street, N.W.
Washington, D. C. 20036

Its Attorneys

Dated: July 2, 1976

TRT telecommunications
CORPORATION

RODERICK A. METTE
VICE PRESIDENT & COUNSEL

July 8, 1976

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: Telenet Communications Corporation's
Application - File No. I-T-C-2634

Dear Mr. Mullins:

On July 1, 1976 Telenet Communications Corporation (Telenet) filed a sharply-worded response to TRT Telecommunications Corporation's (TRT's) letter of June 28 to the Commission regarding Telenet's application for authority to provide packet-switched data communications service between the United States and the United Kingdom, File No. I-T-C-2634. Therein, Telenet accused TRT of engaging in delaying tactics and of abuse of the Commission's processes. In view of these accusations we believe that some further clarification of TRT's position may be required.

Telenet has applied for authority to operate on a direct circuit basis with the British Post Office (BPO) for the provision of packet-switched data communications services between the United States and the United Kingdom, although the BPO quite clearly has not yet agreed (either "formally" or otherwise) to operate directly with Telenet. Accordingly, in TRT's view, there is no doubt that Telenet's application has been prematurely filed and that application of the normal practices of the Commission would require that Telenet's application be dismissed or, at a minimum, that any further processing thereof be deferred until an operating agreement for the proposed service has been concluded.

These basic deficiencies with respect to Telenet's application had previously been brought to the Commission's attention in Western Union International, Inc.'s June 7, 1976 request that Telenet's application be dismissed and in ITT World Communications Inc.'s Petition for Rejection and its Contingent Motion for Extension of Time filed on the same date. The only purpose of TRT's June 28th letter was to set forth its standing as a party in interest with respect to Telenet's application and to request an opportunity to submit its comments thereon in the event that Telenet subsequently concludes an operating agreement with the BPO or the Commission should adopt Telenet's position, that the circumstances require that its application be processed even in the absence of an operating agreement with its proposed UK correspondent. Thus, in view of the unclear procedural status of Telenet's application resulting from its apparently premature filing, the intent of TRT's letter was to notify the Commission and the parties of its desire to be heard when and if the Commission determines that the application is ripe for processing. Certainly Telenet has no basis to characterize TRT's letter as a "delaying tactic" or an "abuse of process". Indeed, since the BPO will not be prepared to commence to provide transatlantic packet-switched data services until approximately three years, it is quite clear that TRT's letter could not result in any delay in the availability of this service to the public.

Very truly yours,

Roderick A Mette

Roderick A. Mette
Vice President & Counsel

cc: W. Hinchman (FCC)
J. Warwick (FCC)
L. Roberts (Telenet)
D. Ward, Esq. (Telenet)
F. DeRosa, Esq. (RCA)
D. Elardo, Esq. (RCA)
R. Michelson, Esq. (WUI)
J. Jacobs, Esq. (ITT)

ITT World Communications Inc.

67 Broad Street
New York, N.Y. 10004
Telephone (212) 797-3300

July 8, 1976

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Telenet Communications Corporation
(Telenet) - File No. I-T-C-2634

Dear Mr. Mullins:

This refers to the intemperate letter, dated July 1, 1976, from counsel for Telenet which, among other things, accuses opposing counsel of "an abuse of the Commission's processes." That charge, which would be offensive if it were not so absurd; comes with particular ill grace from a carrier attempting to use the Commission's processes to obtain approval of an application which is both incapable of implementation and violative of a threshold requirement for Commission certification. In this connection, we also note that this is the second unauthorized "letter-pleading" submitted by Telenet, the first being its letter of June 18, 1976 which sought to convey, inter alia, the Alice in Wonderland impression that Telenet was gleeful over the BPO's repudiation of Telenet's claim that the parties had concluded the required operating agreement.

Certainly, ITT World Communications Inc. (ITT Worldcom) has no reason to apologize to Telenet about the pace of this matter. ITT Worldcom filed its Petition for Rejection on the original comment date of June 7, 1976, despite the pendency of a motion by another party to extend said date to June 23, and ITT Worldcom filed its Reply to Telenet's Opposition, after a de minimis one week extension of time, on July 2, 1976. ITT Worldcom, as did the other filing carriers, limited its pleadings to the dispositive issue of whether Telenet had an operating agreement with the BPO. This, of course, reflected a judgment--shared by every filing carrier but Telenet--that the subject application is dismissable on this ground alone and that there was no point in usin the Commission's processes for a lengthy examination of all the other questions Telenet's 47 page filing was likely to raise. With respect to our Contingent Motion for an extension of time to comment, if necessary, upon the remainder of Telenet's filing, we frankly expect that to be as academic as the instant application itself, since we do not see how the Commission can do anything but reject said application. (However, the Commission should not pass on said Motion until it disposes of our Petition in which it is contained.)

Equally academic are the attachments to Telenet's July 1 letter, consisting of communications which Telenet may or may not have solicited from its customers (curiously, all the attachments are dated after the BPO's May 25 letter repudiating any agreement with Telenet). Simply because some of Telenet's customers may claim to want the subject service, does not mean that the same can (or should) be implemented. Moreover, nowhere does Telenet explain what can be "urgent" about a service which is impossible for it to provide.

In short, the only procedural irregularities in this matter must be laid at Telenet's doorstep. While Telenet might have extricated itself by showing that it did not incorrectly represent in its Application to the Commission that it had an agreement with the BPO, it has made no attempt to do so. Surely, attacks on other counsel and the public relations gimmickry reflected by the attachments to its last letter are not an adequate substitute.

Very truly yours,

Theodore J. Fischkin

TJF/ks

cc: Mr. Walter R. Hinchman (FCC)
Francis J. DeRosa, Esq. (RCA)
Roderick A. Mette, Esq. (TRT)
Robert Michelson, Esq. (WUI)
Donald E. Ward, Esq. (Telenet)
Philip Walker, Esq. (Telenet)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
GRAPHNET SYSTEMS, INC.)
)
)
Application for Authority to Permit Use of) File No. I-P-C-11
Facsimile Services to Communicate With Ter-) File No. I-P-C-11A
minal Devices Located in Belgium, Denmark,)
France, Italy, The Netherlands, Norway,)
Spain, Sweden, Switzerland, The United King-)
dom and West Germany.)

To: The Commission

SUPPLEMENT TO PETITION TO DISMISS OR DENY

RCA Global Communications, Inc., (RCA Globcom), hereby supplements* its "Petition to Dismiss or Deny" the aforecaptioned Application of Graphnet Systems, Inc., (Graphnet).

At the outset we wish to stress that had Graphnet served us as a party-in-interest with a copy of its April 1 amendment, this "Supplement" likely would not have been necessary.**

---

* On July 2, 1976, RCA Globcom, without realizing that the Commission had extended the deadline for "comments" herein to July 10, 1976 (July 12, 1976, in effect), filed a "Petition to Dismiss or Deny" the subject Graphnet Application, dated February 18, 1976. Subsequently, on July 6, 1976, RCA Globcom discovered that Graphnet had amended its February 18 Application on April 1 and May 26, 1976, thereby removing a major defect addressed by RCA Globcom in its July 2 Petition. Hence, this "Supplement" is both timely and appropriate in the circumstances.

** See Commission Letter to the International carriers, dated August 30, 1973, which letter sets forth filing and service procedures to be followed by U.S. carriers with respect to Section 214 Applications. Particularly troublesome to us are the facts that Graphnet was afforded actual notice prior to its April 1 amendment of our particular interest in its original Application herein, and it failed, nevertheless, to serve us with the pertinent amendment. See RCA Globcom "Comments", dated March 17, 1976, pertaining to Graphnet's Section 214 Application to extend its services to Hawaii, at nn. 1 and 5.

It appears in retrospect that RCA Globcom was quite correct in concluding that the intended use by Graphnet of the overseas message telephone service of the American Telephone and Telegraph Company (AT&T), pursuant to the latter's Tariff No. 263, was fatal to its original Application. As stated by the Commission in its letter of April 30, 1976, responsive to the Graphnet Amendment of April 1, 1976:

> "As the proposed service could not be offered pursuant to the AT&T tariff the application proposing the use of AT&T facilities would be defective and unacceptable for filing".

Hence, a major defect in the February 18 Graphnet Application, as recounted in our July 2 Petition to Dismiss or Deny, has been removed.* However, we submit that, for reasons hereinafter set forth, the amended Application is no more sound than was the original.

In lieu of AT&T's international MTS service, Graphnet now proposes to reach Europe by utilizing "the facilities and services of Communications Satellite Corporation, in accord with its Tariff F.C.C. No. 9...." Amendment, April 1, 1976, at 1. It simply cannot do so because the same infirmity exists here as did with respect to its intended use of the AT&T Tariff, i.e., the tariff terms and conditions do not permit Graphnet to implement the service it proposes in its amended Application.

Comsat Tariff F.C.C. No. 9 pertains to the provision to authorized common carriers of satellite service segments between Comsat's Etam Earth Station and "an appropriate communications satellite serving the Atlantic Ocean Area". Such satellite service thus extends *no farther* than the Atlantic satellite facility. The tariff specifically does *not* apply

---

* While not wishing to belabor the matter, we must assert that we were surprised that Graphnet which, by its nature, is totally reliant on other carriers' tariffed services apparently did not realize or understand the relevant use limitations in AT&T's Tariff No. 263 until April 1, 1976.

> "to the channels, facilities or services provided by a foreign communications entity between a satellite and a foreign terminal and at or beyond a foreign terminal...."
> Comsat Tariff No. 9, Para. B(2)

Graphnet apparently recognizes this compelling limitation when it represents, in its May 26 Letter,* that it "proposes to lease circuits only in the satellite uplink".

The "downlink" satellite circuit, of course, is furnished by a "foreign communications entity or entities providing the foreign channels, facilities or services...", and Comsat Tariff No. 9 makes this explicit. Significantly, the Tariff at Paragraph B(3) provides:

> "All arrangements concerning said channels, facilities or services, including hours of operation, shall be made by the customer with the foreign...entity or entities providing them".

Accordingly, the vehicle Graphnet now proposes to utilize to extend its services to Europe *requires* interaction with foreign telecommunications entities. But Graphnet cannot effect pertinent arrangements with these, as there exist no operating agreements upon which to formulate any arrangements. Graphnet thus could not, as a practical matter, extend its services beyond the Atlantic satellite and, as a legal matter, cannot qualify to subscribe to Comsat service under the latter's

---

* In its letter of April 30, 1976, responsive to the Graphnet April 1 Amendment, the Commission requested that Graphnet furnish certain additional information designed to supplement the very cursory data it had supplied regarding its intended "switch" from AT&T MTS to Comsat facilities. Such data, the Commission advised, was "required by Section 63.01 of the Commission's Rules" and was "necessary to accomplish the preliminary processing of the application".

Tariff No. 9.

That appropriate operating agreements are essential is conceded by Graphnet;* however, we submit, these are a condition precedent in the circumstances not only to its proposed use of Comsat service but, more significantly, to any Commission consideration of its amended Application. We believe that the absence of any such operating agreements renders the February 18 Application as amended, at best, premature. That is to say, there exists the distinct possibility that Graphnet cannot and will not be able to obtain such operating agreements, or any of them, and thus any grant of its amended Application could not result in the implementation of its proposed service offerings to and from Europe.** We believe, therefore, that the amended Application promptly should be rejected and returned to Graphnet with explicit instructions to the effect that it may refile, if at all, only when it is capable of implementing the service it is proposing.***

---

* In its May 26 Letter, at 3, Graphnet states:

> "The proposed operation *contemplates* an appropriate agreement with foreign correspondent carriers in the designated overseas countries whereby any necessary interface with such carriers' satellite facilities would be established, and the foreign local telephone network would be utilized for distribution of the communications originated by Graphnet subscribers". (Emphasis supplied)

** We note that pursuant to Comsat Tariff No. 9, Para. D(2), there is an apparent present inability of Graphnet to reach "selected distant terminals" in Denmark and Norway, two of the nations to which Graphnet seeks authorization to extend its service. Neither the Application nor amendment thereto addresses the apparent need for the acquisition of foreign land-line facilities to extend Graphnet service from an appropriate earth station to terminal locations in these nations.

*** As this and our July 2 pleading indicate, too much time has been expended, not only by us but by Commission staff, in the pursuit by Graphnet of its ill-considered dreams and schemes.

In view of the above, and those matters set forth in our July 2, 1976 Petition to Dismiss or Deny, we respectfully request that the amended Graphnet Application be dismissed or otherwise denied.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

Francis J. DeRosa (By DJE)
Francis J. DeRosa
60 Broad Street
New York, New York 10004

Donald J. Elardo
Donald J. Elardo
2030 M Street, N.W.
Washington, D. C. 20036

Its Attorneys

Dated: July 12, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of GRAPHNET SYSTEMS, INC. Application for Authority to Permit Use of Facsimile Services to Communicate With Terminal Devices Located In Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany	)	File No. I-P-C-11 I-P-C-11-A

To: The Commission

PETITION TO DENY

ITT World Communications Inc. (ITT Worldcom) hereby petitions the Commission to deny the above captioned application of Graphnet Systems, Inc. (Graphnet) to serve various overseas points. As will be shown hereafter, the Graphnet application fails to satisfy the plain requirements of Section 214 of the Communications Act and of Part 63 of the Commissions Rules and Regulations for the granting of such applications, and is affirmatively defective as well.

At the outset ITT Worldcom notes that the Graphnet application here presents substantially the same questions as were presented by that carrier's recent application to serve Hawaii (FCC File No. W-P-C-721). Rather than repeat here the arguments addressed to those questions from ITT Worldcom's "Petition to Deny" that application and "Reply" to Graphnet's opposition, ITT Worldcom would ask that the arguments in those pleadings be incorporated herein by reference 1/ as part of its comments respecting the instant Graphnet application. The comments following are

---

1/ Copies of the referenced pleadings are attached hereto for the Commissions convenience.

therefore supplementary to comments already made respecting the similar Graphnet Hawaii application and are addressed primarily to matters which may be unique to, or require different emphasis for the instant application.

Although the sketchy outline of its proposed service, shown by Graphnet in the instant application, would obviously not provide a basis for the Commission to make the requisite section 214 finding that the proposed service was required by the public convenience and necessity, 2/ an even more glaring defect appears on the face of that application. Simply stated, Graphnet cannot complete the communications circuit between a sender in the United States and a recipient in Europe. Graphnet's proposed service offering is contingent upon the hypothetical eventuality that Graphnet might someday obtain agreement from one or more overseas administrations to enter into a correspondency arrangement. The Commission has always refused to commit its limited resources to the processing of such contingent, hypothetical applications.

After being advised by the Commission (letter, dated April 30, 1976, reference 9420) that its original application was defective insofar as it proposed to utilized the Dataphone service of the American Telephone and Telegraph Co. (AT&T Tariff No. 263) to provide overseas record trans-

---

2/ This non-compliance with criteria established by Sections 214 of the Act and by the Commissions Rules and Regulations apparently reflects Graphnets continued reliance on a philosophy that the Commission's Specialized Common Carrier policies have created a blanket waiver from compliance with those criteria for all further authorizations sought (regardless of geographical or operational scope) by an initially qualifying specialized common carrier. ITT Worldcom has already demonstrated the fallacy of this view in its referenced "Hawaii" pleadings.

missions, Graphnet sought an arrangement with the Communications Satellite Corporation (Comsat) for obtaining the use of a "switchable" full time voice grade circuit lease, pursuant to Comsat's FCC Tariff No. 9. 3/ As Graphnet plainly recognizes, however, it would *only* obtain circuits from Comsat *in the satellite uplink* (i.e. the "half-circuit" between a U.S. earth station and an orbiting satellite). The satellite downlink (as well as local tail circuits and switching facilities) which would be required to complete the communications circuit would have to be provided by a correspondent overseas administration. Graphnet rather obviously does not have any present agreements with such overseas administrations for providing the overseas link of the service Graphnet proposes and, so far as ITT Worldcom is aware, has not even entered into serious negotiations for such correspondency arrangements. Indeed Graphnet's May 26, 1976 response to the Commission on this point makes clear the contingent, hypothetical nature of these correspondency arrangements when it states that "The proposed operation *contemplates* an appropriate agreement with foreign correspondent carriers" (emphasis added).

The Commission has consistently required that applicants for authority to initiate new services to overseas points show that an appropriate agreement exists with the overseas correspondent for such service

---

3/ A threshold question, respecting the proposed Graphnet/Comsat arrangement, is presented as to whether Graphnet, a value added carrier utilizing the tariffed services of authorized common carriers providing service to end users, is properly an "authorized user" for obtaining circuit capacity directly from Comsat, a "carrier's carrier."

before the application can be processed. See for example the Commission's September 12, 1975 letter to the French Telegraph Cable Company (FCC File No. I-T-C-2336-8) regarding an application for new direct telex authority between the United States and the United Kingdom. There the Commission stated:

> "We note that the BPO is ready to open negotiations with respect to direct telex service. Such an indication is not sufficient basis for a grant of authority to provide service pursuant to Section 214 of the Communications Act. We require, at the very least, indication that agreement has been reached plus a listing of the material terms of a contract to be signed in the near future. Such contract, after signature has been completed, must also be filed with the Commission as soon as possible after authorization." 4/

The reason for this policy against processing "contingent" applications is plain enough. In addition to apparently severe limits on the Commission's resources, Section 214 of the Act requires the Commission to make certifications determinations on the basis of present facts. For an application contingent upon a possible future happening, the Commissions would have no basis for judging what facts and public interest considerations may be relevant if, as,, and when the contingency may be realized.

Graphnet's application here does not even reflect a "readiness to open negotiations" with overseas administrations. It clearly has not yet

---

4/ See also American Telephone and Telegraph Co. 35 FCC 2d 801,823 (1972), where the Commission rejected an application of TRT Telecommunications Corp. to obtain circuits in the TAT-6 cable because TRT "does not show that it has any agreement with any overseas correspondents for the use of such circuits."

reached any agreements with such administrations.[5/] The Commission should therefore reject the Graphnet application as conflicting with established Commission policy and failing to meet a fundamental requisite for Commission processing of such applications.

As was true with its Hawaii application, Graphnet's instant application is completely devoid of any showing of public need for its proposed service offering, or for any reasons why existing services are not adequate to serve the public interest. Only here, the failure to satisfy these fundamental requisites of Part 63 of the Regulations is even more striking. Because here, Graphnet would control, at most, only half of the communications path and clearly has no agreement from overseas administrations to provide complementary facilities to implement Graphnet's "innovative" services. Even assuming that Graphnet ultimately implements "packet switching" on its domestic system (as claimed in its original domestic application and as the Commission apparently assumed would characterize Graphnet's service offering from the beginning of operations), it will have no means of providing the apparent benefits of this transmission technique to overseas points. Similarly, Graphnet's much touted circuit optimization through the use of "concentrators" requires that such a device exist at each end of the circuit; thus, this too cannot be implemented for overseas points (at least not without agreement of, and installation of comparable "concentrator" equipment by each overseas administration, which "contingency" clearly does not now exist).

[5/] ITT Worldcom and other U.S. IRCs have been advised by the Italian Administration, Italcable, that Graphnet has sent an exploratory inquiry to Italcable regarding such a correspondency and that Italcable subsequently advised Graphnet that it was "not interested in your (Graphnet's) proposal".

To place this issue in a slightly different perspective, even if the Commission granted Graphnet's contingent application, Graphnet would be unable to offer an overseas service which differed in any substantive respect from that already provided by the Datel offering of the international record carriers. Thus, Graphnet's application boils down to a request that the Commission grant its highly speculative contingent application for the sake of creating a new competitor in an existing market to offer a service identical to services presently being provided in that market by existing carriers. This rationale for granting a Section 214 application was plainly and unequivocally forbidden by the Court of Appeals in Hawaiian Telephone Company v. FCC. 6/

As an additional matter, ITT Worldcom notes that Graphnet's projections of traffic/cost/revenue data for the proposed service are so superficial and apparently arbitrary as to be meaningless. Graphnet has apparently reached into the "ether" and plucked five numbers which it chooses to call "No. of documents" (traffic) for each of the first five years of operation; it reached again and found a number (8.5) which it chooses to conclude represents average message revenue (which when multiplied by traffic projections for a given year gives "Total Revenues"). While Graphnet may not have actually selected these numbers from "out of the blue", it provided no supporting information from which any other conclusions could be reached. Graphnet's cost data present a like problem. Not only is there no supporting data for Graphnet's ultimate cost projections, but Graphnet has projected a lower unit (per message) cost for the use of the full time leased channel facility to be obtained from Comsat than for the (now prohibited) use of the switched MTS service to be obtained from AT&T. This strongly suggests that Graphnet has

---

6/ 498 F.2d 771 (D.C. Circuit, 1974)

neglected to include in its cost projections the payout to overseas administrations for the satellite down link and necessary overseas transmission and switching facilities.

The gross failure of Graphnet to provide even rudimentary compliance with the Commissions specific requirements governing applications for new service, particularly given the scope and importance of the authority sought, in closely analogous to the situation faced by the Commission in 1972 in dealing with the application of TRT Telecommunications for authority to acquire IRU interests in the TAT-6 cable. There,7/ faced with a similar failure on the part of TRT to adequately address the requirements of Section 214 and Part 63, the Commission stated:

> "Furthermore, TRT does not give the Commission the necessary data which would support the grant of an application to a fourth carrier to enter generally into the market to compete for traffic to Europe, Africa and the Middle East. Under these circumstances we are in no position to take affirmative action on the TRT application. We shall therefore dismiss it without prejudice to a later filing, which will give sufficient information upon which to decide the basic policy issue of whether it should be permitted to enter this area generally as a fourth competing carrier; of course, TRT will be expected to make the showing required by Section 214 of the Act and our Rules in justification of the number of the circuits requested to each point to be served." (emphasis added).

Finally, although covered in ITT Worldcom's "Hawaii" pleadings, which have been incorporated herein by reference, ITT Worldcom would here reemphasize the point that the Commission's Specialized Common Carrier Service decision (29FCC 2d 870) plainly did not contemplate

---

7/ American Telephone and Telegraph Co.
35FCC 2d 801, 823 (1972)

extension of the authorizations granted pursuant to that decision into the international arena, where substantially different operating and competitive conditions prevail from those considered in that decision. Consequently, any determination to extend those policies to the international sphere could only be made after a complete review, including opportunity for participation by interested parties, of those policies in the context of the actual conditions pertaining in the international field.

For all of the reasons set forth hereinbefore, ITT Worldcom therefore urges that the Commission reject or deny the Graphnet application to provide service to European points.

Respectfully submitted,

ITT World Communications Inc.
By:

Joseph J. Jacobs

John A. Ligon

Its Attorneys
67 Broad Street
New York, N.Y.

Dated: July 12, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GRAPHNET SYSTEMS, INC.	)	
	)	
Application for Authority to Permit Use of Facsimile Services to Communicate with Terminal Devices Located In Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany	)	File No. I-P-C-11 and I-P-C-11-A

PETITION TO DENY

Western Union International, Inc. (WUI) hereby submits its Petition to Deny the application of Graphnet Systems, Inc. (Graphnet) to permit the use of facsimile services to communicate with terminal devices located in various European countries.

At the outset, it should be noted that Graphnet's application for service to Europe is clearly incomplete, substantively and procedurally defective, and deserving of no consideration by the Commission for the reason that Graphnet has no operating agreement with any foreign correspondent carrier and thus could not presently implement the service for which it now requests authority even if the Commission were to act favorably upon the instant application. However, should the Commission determine to consider the application in spite of this fatal defect, WUI submits that Graphnet's application to extend its service to Europe must be rejected for the following compelling reasons:

¶ Graphnet has failed to implement the type of domestic telecommunications system described to the Commission in its Initial Application of March 9, 1973 (hereinafter "Initial Application")

¶ Graphnet has failed to demonstrate any public need for the proposed extension of its service to Europe.

¶ Graphnet's application is devoid of the critical data required by Section 63.01 of the Commission's Rules and Regulations.

I. GRAPHNET'S APPLICATION IS FATALLY DEFECTIVE FOR LACK OF AN OPERATING AGREEMENT WITH ANY FOREIGN CARRIER

Graphnet's application, as amended by letter to the Commission dated April 1, 1976,* proposes to lease satellite facilities from Comsat to access the European market. In response to an inquiry from the Common Carrier Bureau dated April 30, 1976, Graphnet states that it "proposes to lease circuits only in the satellite uplink," (letter from Graphnet to the Commission dated May 26, 1976, p. 2) and that "[t]he proposed operation contemplates an appropriate agreement with foreign correspondent carriers in the designated overseas countries whereby any necessary interface with such carriers' satellite facilities would be established..." (Graphnet letter of 5/26/76, p. 3). It is abundantly clear from the foregoing that Graphnet cannot presently implement the service it now proposes in the absence of operating agreements with foreign correspondent carriers in each of the countries it proposes to serve. As ITT World Communications Inc. has so clearly demonstrated in its Reply (dated 7/2/76) in the matter of Telenet Communications Corporation (File No. I-T-C-2634-hereinafter ITT Telenet Reply), it is for this very reason that the Commission has, prior to the aforesaid Telenet application and the instant Graphnet application, consistently refused to place on Public Notice applications for new international service which do not evidence the necessary operating agreement with the relevant foreign correspondent carrier.

---

*Commission policy, set forth in a letter to all international carriers dated August 30, 1973 (reference no. 9520), clearly requires all applications pursuant to Section 214 of the Act be served by the Applicant on all other international carriers. Not only did Graphnet fail to do so, but it also failed to serve the amendments of April 1, 1976 and May 26, 1976 to its instant application on the other carriers for which reason RCA's Petition to Deny the instant application filed on July 2, 1976 addresses itself to a point which has been mooted by these amendments. WUI itself learned of these amendments only when it received a copy of the Commission's letter of July 2, 1976 to ITT (reference no. 9420) which referred to the amendments.

WUI urges the Commission to return to this policy because of its sound and logical basis: (a) the public need and economic feasibility determinations which the Commission must make on any application for new service to an international point (cf, WUI Reply in the matter of Graphnet's Hawaii application dated 6/7/76, File No. W-P-C-721, p. 11-hereinafter

WUI Hawaii Reply) may no longer be valid by the time an applicant finally enters into an operating agreement, if it ever does so, with the relevant foreign correspondent carrier; and (b) abandonment of this sound precedent would doubtless lead to a veritable flood of "academic" or "speculative" applications, the processing of which would squander scarce Commission resources, exacerbate the substantial backlog of pending "real" applications, and create chaos in the international communications field for users and carriers alike.* For this reason, WUI requests dismissal of the instant Graphnet application.

II. GRAPHNET HAS FAILED TO IMPLEMENT THE TYPE OF DOMESTC TELECOMMUNICATIONS SYSTEM DESCRIBED IN ITS INITIAL APPLICATION.

If, in spite of the foregoing, the Commission nevertheless determines to review the instant application, WUI contends that it has further fatal flaws. WUI will not burden the Commission by repeating at length here the arguments with respect to the nature of Graphnet's existing domestic system which WUI asserted in its Petition to Deny (dated 3/17/76 in the matter of Graphnet's Hawaii application, File No. W-P-C-721; hereinafter WUI Hawaii Petition to Deny) and its Hawaii Reply. Instead, WUI hereby incorporates these arguments herein by reference.

---

*cf, ITT Telenet Reply, p. 4-5.

It should be emphasized, however, that there continues to be substantial doubt as to the nature of the system presently utilized by Graphnet. In this regard, WUI notes that the Common Carrier Bureau has recently rejected, by letter dated July 2, 1976 (Ref. No. 9510), Graphnet's Transmittal No. 20 and accompanying revisions to Graphnet's Tariff F.C.C. No. 1 because "[i]t does not appear that the service proposed in Graphnet's Transmittal No. 20 falls within packet switched facsimile communications service proposed in that application [the Initial Application], but may constitute an offering of domestic public message service." (letter of July 2, 1976, p. 2) WUI also notes that Graphnet recently filed a "Contingent Application" (File No. W-P-C-950) for authority to permit delivery to teleprinting terminals such as telex and TWX as a result of a Petition to Reject Graphnet's Transmittal No. 18 by The Western Union Telegraph Company. WUI interprets this "Contingent Application" as a tacit admission by Graphnet that it is and has been operating outside of its current certificate authority, as previously alleged by WUI in its Hawaii Petition to Deny and Reply.

Finally, WUI notes that both the instant application and the "Contingent Application" contain misleading statements as to the nature of Graphnet's existing system. For example, on pages 1 and 2 of Attachment 1 to the instant application Graphnet states:

> "By means of a special terminal signalling device, the subscriber identifies himself to the system for billing purposes..."

However, in paragraph 39(e) of Graphnet's Opposition (dated 4/26/76) in the matter of its Hawaii application (File No. W-P-C-721) Graphnet admits that:

> "Rather than providing a separate [terminal signalling] device, Graphnet has incorporated all signalling functions into its network hardware and software."

Also, on page 2 of Attachment 1 to Graphnet's instant application Graphnet implies that it currently has operational more than one regional computer switching center:

> "...regional processing centers are linked together with high speed data channels." (Emphasis added)

> "If the addressee's concentrator is in the same regional center's distribution area..."

However, as WUI pointed out in its Hawaii Reply, "Graphnet's Opposition admits that only one regional computer switching center is currently operational." (Reply, p. 10) Pages 5 and 6 of the "Contingent Application" likewise refer to regional computer switching centers even though it is clear that only one such switching center now exists. The point here is that Graphnet has consistently been less than candid with the Commission in describing the nature of the telecommunications system it has deployed and now proposes to expand.

III. GRAPHNET HAS FAILED TO DEMONSTRATE ANY PUBLIC NEED FOR THE PROPOSED EXTENSION OF ITS SERVICE TO EUROPE

With regard to the issue of public need, it is clear that Graphnet has taken substantially the same position as it took in its application to extend its service to Hawaii (File No. W-P-C-721):

> "To the extent services such as Graphnet's are not presently available between the United States and Europe, and since the market for such services even within the United States is only now developing, precise estimates of initial and future traffic... are impossible." (Graphnet application, ¶6)

Again, WUI will not burden the Commission by repeating at length here unrebutted arguments on the inadequacy of this alleged "showing" of public need which have been fully developed in WUI's Hawaii Petition to Deny and Reply, but instead hereby incorporates herein by reference said pleadings insofar as they relate to the issue of public need. Also, Graphnet, as it did in its Hawaii application, states that:

> "...the same considerations which led to the Commission's ultimate public interest determinations in that instance [granting of the Initial Appli cation for domestic service] are equally pertinent in this case." (Graphnet application, attachment 3, p. 1-2)

However, as WUI has demonstrated on pages 7 and 8 of its Hawaii Reply, policies and determinations relating to domestic matters cannot legally be controlling in applications for new international service, as completely different conditions and public interest considerations apply.*

Furthermore, WUI notes that the instant application, like previous Graphnet applications, contains many grandoise but totally unsubstantiated predictions of future traffic growth, as the following four examples demonstrate:

> 1. "Graphnet has received strong indications of interest in the availability of such services both from existing and from potential customers." (Graphnet application, Attachment 3, p. 3)

Should not the Commission be advised as to what "strong indications" were received, and how they were solicited or otherwise obtained?

> 2. "Beyond individual users' demands for transatlantic facsimile services, available statistical information highlights both the need for such services and the ability of the marketplace to support their provision. " (Graphnet application, Attachment 3, p. 34)
>
> 3. "As can be seen, recent trends have established the market to be growing far more rapidly than earlier anticipated." (Graphnet application, Attachment 3, p. 4)

Should not the Commission be apprised as to the nature and source of this "available statistical information" and these "recent trends"?

---

*cf, Hawaiian Telephone Company v. F.C.C., 498 F.2d 771 (D.C. Circuit , 1974).

> 4. "The number of facsimile terminal installations in Europe and The United Kingdom, although still far behind the United States, has been significant, and substantial growth, to over 84,000 units, is projected by 1982." (Graphnet application, Attachment 3, p. 5)

Should not the Commission be apprised as to source of this projection and the means by which it was made?

In sum, no meaningful and verified or verifiable information on the critical issue of public need has been presented to the Commission by Graphnet in the instant application. Accordingly, the application should be denied.

IV. GRAPHNET'S APPLICATION IS DEVOID OF THE CRITICAL DATA REQUIRED BY SECTION 63.01 OF THE COMMISSION'S RULES AND REGULATIONS

Graphnet states in paragraph 8 of the instant application that "[a]s indicated in paragraph 6, above, predictions of traffic volume, and hence of costs and revenues cannot be made with precision." Since, as WUI has demonstrated above, the Commission has no basis upon which to evaluate Graphnet's unsupported predictions of traffic and future growth, the cost and revenue information set forth in Attachment 2 (as amended) of Graphnet's application is completely meaningless. Moreover, user charges are based upon system connect time (see Graphnet application, p. 7) and traffic volume estimates are limited to "number of communications." No explanation whatsoever is offered by Graphnet as to how it converted its traffic estimates into revenue estimates. Presumably, Graphnet assumed a certain average length of system connect time per message, but neither this assumption nor the necessary supporting data therefor are anywhere presented for scrutiny by the Commission and interested parties. Under these conditions, the Commission has absolutely no basis upon which to evaluate the economic viability of Graphnet's proposed extension of its services to Europe. Accordingly, the instant application should be denied.

CONCLUSION

For the reasons stated above, it is respectfully requested that the Commission deny Graphnet's Application to extend its services to Europe.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: William R. Horner
Its Attorney

One WUI Plaza
New York, New York 10004

Dated: July 12, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GRAPHNET SYSTEMS, INC.	)	
	)	
Application for Authority to Permit Use of Facsimile Services to Communicate With Terminal Devices Located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany	)	File Nos. I-P-C-11 & I-P-C-11A

COMMENTS OF TRT TELECOMMUNICATIONS CORPORATION

TRT Telecommunications Corporation (TRT) hereby submits its comments with respect to the above-captioned application filed by Graphnet Systems, Inc. (Graphnet) for authority, pursuant to Section 214 of the Communications Act, to provide facsimile and data communications services between the United States, on the one hand, and Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany, on the other hand. In this regard, TRT respectfully states as follows:

It is clear that Graphnet's application is either incomplete or has been prematurely filed. Although it is apparent that the international services which it proposes could not be provided without the agreement of administrations of the European countries concerned, Graphnet has not indicated that any of these administrations have agreed to provide a joint service with Graphnet or have even agreed to permit Graphnet to utilize their message telephone facilities to provide its proposed service.

Accordingly, TRT submits that Graphnet's application should be dismissed.

Respectfully submitted,

TRT TELECOMMUNICATIONS CORPORATION

Roderick A Mette

Roderick A. Mette
Vice President & Counsel

1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

July 12, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION)
)
Application for Authority to) File No. I-T-C-2634
Extend Packet-Switched Data)
Communications Service from)
the Continental United States)
to the United Kingdom and Points)
Beyond)

MOTION TO STRIKE

Telenet Communications Corporation (Telenet), by its attorneys, hereby moves to strike such portions of the July 2, 1976 "Reply" of ITT World Communications, Inc. (ITT) concerning the subject application and of the ITT letter of July 8, 1976 as imply that Telenet and the British Post Office (BPO) do not intend to institute the proposed service until several years in the future, or as imply that the subject application is in any fashion premature, speculative, or indefinite as a result thereof.

On page 3 of its Reply, ITT states that "the BPO's plan to establish an international packet switching gateway will not come to fruition until 'about three years'" (emphasis in original), citing as authority the BPO's May 25, 1976 letter to Telenet. ITT then bootstraps itself from this statement to conclude that (1) "No 'Agreement" with Telenet is even contemplated in the foreseeable future" (caption, p.2); (2) the proposed service would not be initiated until 1980; and (3) Telenet's showings of public need, costs, and rates cannot be intelligently evaluated at this time.[1/]

In ITT's letter of July 8, it seeks to perpetuate this myth, claiming that Telenet's application is "incapable of implementation" and for "a service which is impossible for it to provide."

[1/] As to conclusions (2) and (3), see p.5 of ITT's Reply:

> "But there is no way that Telenet's purported showing of needs, costs and rates can be intelligently evaluated if the Commission cannot know when, if at all, the service to which they relate might be implemented.
>
> "4. Thus, the Commission cannot even begin to guess whether the tariff charges Telenet proposes in its current application will be reasonable, as required by Section 201 of the Communications Act, in light of economic conditions *in 1980, when, perhaps, the service might be initiated*. Nor can the Commission make any intelligent finding *now* that the proposed service will met the requirements of "public need" and "economic justification" *in 1980*. For example, in a competitive environment, "public need" is measured in terms of "whether there is sufficient traffic to support the addition of another competing direct circuit and upon the effect of the opening of such circuit upon the applicant as well as all other carriers providing service to the public." However, in this dynamic industry, the Commission cannot *now* reliably determine whether the services of existing carriers *in 1980*, and the then current level of traffic demands, will preclude the necessity of a new entrant such as Telenet." (Emphasis added, except for lines 13 and 25, where emphasis in original. Footnotes omitted.)

Such conclusions are totally false, as shown below from facts known to ITT prior to the filing of its Reply, and represent an irresponsible attempt to mislead the Commission into deferring consideration of the merits of Telenet's application.[2]

As noted above, in its Reply, ITT proceeds from a reference in the BPO's May 25 letter regarding the Post Office's plans for the development of international packet-switched data services; conveniently, however, ITT fails to quote the BPO's entire statement on this subject:

> "I think it would be helpful to clarify further the British Post Office position with regard to the development of its packet switched data services. It is proposed to establish an international packet switching gateway in the United Kingdom to be in service in about three years time to provide international packet switched data communications services to all countries, both within Europe and elsewhere, suitably equipped to operate in this manner. This gateway would provide access, via appropriate means, to potential customers in the United Kingdom and in due course interconnection to the national packet switched network which it is hoped will follow the experimental network currently being established.

---

[2] Telenet's concern regarding this attempted deception is heightened by the July 8, 1976 letter of TRT Telecommunications Corp. (TRT) to the Commission regarding the instant application, in which TRT takes as a fact--in apparent reliance upon ITT's assertions--that "... the BPO will not be prepared to commence to provide transatlantic packet switched services until approximately three years...".

> "In the meantime we are considering interim arrangements for the establishment of a packet switched data communications service with the United States on some expedient basis; one which can develop into and be absorbed by the major gateway described above." (Emphasis added.)

ITT also failed to acknowledge the BPO's express desire stated in its April 21, 1976 letter to Telenet (Exhibit A to Telenet application), to commence service from the United Kingdom to the Telenet network by the end of 1976:

> "We are anxious to be able to provide this service for our customers at an early date and would hope it possible to commence by the end of 1976. It should be noted that we would desire to utilise appropriate CCITT interface standards in effecting the international interconnection. In the UK we expect to be in a position within three years to provide a complete international packet switching gateway exchange capable of interconnection at internationally agreed standards to any suitably equipped country. In the interim we will be prepared to make expedient arrangements for the provision of service to the USA." (Emphasis added.)

Indeed, in its April 1976 letter to ITT (Exhibit 2 to ITT Reply) transmitting a copy of its April 21 letter to Telenet, the BPO emphasises this point:

> "As indicated we are anxious to open a service [to provide access to Telenet] at an early date. . .",

In its April 30 reply to the BPO (Exhibit A to Telenet application), Telenet stated its desire and willingness to commence service within the short timeframe proposed by the BPO:

> "We share your desire to commence service between the U.S. and the U.K. by the end of this year, and towards this end we will be prepared to activate our half circuits promptly following FCC approval of our application therefor." (Emphasis added).

In the light of these specific statements by the BPO and Telenet that both parties wish to commence service by the end of 1976, it is hard to imagine that ITT could, in good faith, conclude that service would not begin until 1980 or that the Commission could not make intelligent findings now as to the proposal. How much clearer could Telenet and the BPO be in expressing their mutual desire to institute this important new service at the earliest possible date? Surely ITT would not have the Commission believe--in spite of the BPO's express statement to the contrary--that the BPO's longer range plans for establishment of expanded packet-switching facilities in the U.K., to be used in the provision of service to countries around the world, are indicative of the speed with which U.S. - U.K. service can and will be commenced.

WHEREFORE, Telenet requests that all references contained in ITT's Reply 3/ concerning the time schedule for commencement of the proposed service be striken as demonstrably

---

3/ And in the July 8 letters of TRT and ITT.

false and misleading.

Respectfully submitted,

TELENET COMMUNICATIONS CORPORATIO

By:

Philip M. Walker
Vice President & General Counse
Telenet Communications Corp.
1050 17th Street, N.W.
Suite 850
Washington, D. C. 20036

By:

Donald Ward
1050 17th Street, N.W.
Suite 840
Washington, D.C. 20036

Its Attorneys

July 13, 1976

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

[illegible]

Telephone (212) [illegible]

July 15, 1976

Mr. Vincent J. Mullins, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Telenet Communications Corporation
File No. I-T-C-2634

Dear Mr. Mullins:

By letter of July 1, 1976, Telenet Communications Corporation (Telenet) has attempted to re-argue and buttress Telenet's above-referenced application to provide packet-switched data communications between the United States and the United Kingdom. Having been forced to acknowledge its lack of any operating agreement with its purported correspondent in the United Kingdom,* Telenet has now taken the position that a "formal agreement" with the BPO is not a prerequisite for the authorization it seeks herein.

In its Opposition"** filed on June 15, 1976 Telenet appears to be arguing that its lack of a "formal agreement" with the BPO is "perfectly understandable" because "Telenet is not an existing international common carrier". (Telenet Opposition, p. 5) The implication from that reasoning is that once the Commission grants

---

*This admission was drawn from Telenet only after receipt by Telenet and the international record carriers of a May 25, 1976 BPO letter stating "... that as far as the British Post Office is concerned, we have no agreement with Telenet Communications Corporation to establish a direct service nor to make a joint service offering." See WUI's letter of June 7, 1976 forwarding to the Commission a copy of the BPO letter.

**Opposition of Telenet Communications Corporation to Western Union International's Request for Dismissal and to ITT World Communication's Petition for Rejection, File No. I-T-C-2634.

Telenet an international hunting license, the necessary operating agreement will fall into place.

Telenet's position in this regard is squarely contradictory to the position it asserted in its "Reply" in Docket No. 20097.* There, in discussing the resale of international services and facilities, Telenet stated:

> "There is no reason, in principle, why the Commission should not certificate additional firms to lease international facilities and offer common-carrier service to the public, assuming that two criteria are met: (a) That the proposed service meets the public convenience and necessity criterion of Section 214 of the Act, and (b) That the applicant has negotiated the necessary operating agreements with appropriate overseas entities. (page 14, emphasis added).

Since Telenet has clearly not "negotiated the necessary operating agreements" with the BPO, its two stated positions are hopelessly inconsistent. On the one hand it argues that an operating agreement is a prerequisite for authorization, and on the other hand it asserts that only after being certificated can it obtain the necessary agreement.

It is respectfully submitted that Telenet's position regarding the need for a prior operating agreement was correct in Docket No. 20097 and wrong in the instant case..

---

*In the Matter of Regulatory Policies Concerning Resale and Shared Use of Common Services and Facilities; Reply Comments of Telenet Communications Corporation, February 24, 1975.

We continue to reserve our right to comment substantively on Telenet's application, if necessary, to following resolution of the threshhold question concerning the lack of an operating agreement.

Very truly yours,

Robert Michelson

cc: Telenet Communications Corporation
Donald E. Ward, Esq.
Philip M. Walker, Esq.

ITT World Communications Inc.
Joseph J. Jacobs, Esq.

RCA Global Communications, Inc.
Francis J. DeRosa, Esq.

TRT Telecommunications Corporation
Roderick A. Mette, Esq.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

July 16, 1976

IN REPLY REFER TO:
9420

ITT World Communications Inc.
67 Broad Street
New York, New York 10004

Attention: Theodore J. Fischkin, Esq.

TRT Telecommunications Corporation
1747 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

Attention: Roderick A. Mette, Esq.

RCA Global Communications, Inc.
2030 M Street, N.W.
Washington, D. C. 20036

Attention: Donald J. Elardo, Esq.
Francis J. DeRosa, Esq.

Western Union International, Inc.
One WUI Plaza
New York, New York 10004

Attention: Robert Michelson, Esq.

In Re: Telenet Application I-T-C-2634; requests for additional 30-day period in which to submit comments.

Gentlemen:

This is in response to your various requests in the above-captioned matter for an additional comment period to follow what you consider a necessary clarification of Telenet's arrangements with its proposed United Kingdom correspondent, the British Post Office. The substance of your comments in this proceeding has been that the application should be dismissed because of the absence of a formal agreement between the British Post Office and Telenet. The Rules of this Commission do not require that such an agreement be filed before an application can be accepted for filing.

Thus, the usual pleading period has elapsed. Moreover, an extension an of time has already been granted, and the further extension requested could lead to dilatory conduct.

However, to afford a third opportuni[illegible]or comments on the substance of Telenet's application, we are grant[illegible] an extension of time until Friday, July 23, 1976 in which additional comments may be filed.

Sincerely,

Walter R. Hinchman
Chief, Common Carrier Bureau

cc: Telenet Communications Corporation
American Telephone and Telegraph Company
Hawaiian Telephone Company

ITT World Communications Inc.

67 Broad Street
New York, N.Y. 10004
Telephone (212) 797-3300

July 23, 1976

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Telenet Communications Corporation
File No. I-T-C-2634

Dear Mr. Mullins:

In the guise of a so-called "Motion to Strike" dated July 13, 1976, Telenet Communications Corporation (Telenet) has submitted an unauthorized Surreply to ITT World Communications, Inc.'s (ITT Worldcom) Reply to Telenet's Opposition to ITT Worldcom's Petition for Rejection. This unauthorized Surreply continues Telenet's desperate efforts to devise new interpretations of the British Post Office's (BPO) May 25, 1976 letter,[1] which utterly destroyed Telenet's claim as to the existence of the necessary operating agreement with that entity.

Telenet's latest interpretation attempts to convey the impression that the BPO might enter into some agreement with Telenet as to interim operations. If any language in the BPO's May 25, 1976 letter were rationally capable of such a construction, this would have been evident to Telenet when it initially filed its Opposition. In any event, it is sufficient to note that the BPO's May 25 letter expressly disclaimed that it was in a position to "make any proposals in relation to how the international facilities should be provided."

---

[1] See Telenet's letter - pleadings of June 18 and July 1, 1976.

Mr. Vincent Mullins
Page Two
July 23, 1976

Despite Telenet's repeated exercises in obfuscation, the heart of the matter remains, as Telenet has never denied, that it has no agreement to operate in conjunction with the BPO (and there is simply no evidence that any such agreement will ever materialize). As Western Union International, Inc. pointed out in a letter dated July 15, 1976, even Telenet agrees that 214 authority must be conditioned upon a showing "that the applicant has negotiated the necessary operating agreements with appropriate overseas entities." The patent legal insufficiency of the instant application is thus manifest.

By reason of the foregoing, Telenet's "Motion to Strike" should be denied.

Respectfully submitted,

Theodore J.

Theodore J. Fischkin
Staff Counsel

TJF/lg

cc: Mr. Walter R. Hinchman (FCC)
Francis J. DeRosa, Esq. (RCA)
Roderick A. Mette, Esq. (TRT)
Robert Michelson, Esq. (WUI)
Donald E. Ward, Esq. (Telenet)
Philip Walker, Esq. (Telenet)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION) File No. I-T-C-2634
)
Application for Authority to Extend Packet)
Switched Data Communications Service)
from the Continental United States to the)
United Kingdom and Points Beyond)

ITT WORLD COMMUNICATIONS INC.'S PETITION TO DENY

ITT World Communications Inc. (ITT Worldcom) hereby petitions the Commission to deny the above captioned application of Telenet Communications Corporation (Telenet). In support hereof, ITT Worldcom submits the following:

1. As heretofore shown, the instant application is legally insufficient, and must be dismissed, since Telenet has no agreement to provide the subject service in conjunction with the British Post Office (BPO).[1] Indeed, even Telenet has agreed that 214 certification is contingent upon a showing, wholly absent here, "that the applicant has negotiated the necessary operating agreements with appropriate overseas entities."[2]

---

[1] See ITT Worldcom's Petition for Rejection, dated June 7, 1976, and ITT Worldcom's Reply, dated July 9, 1976.

[2] Telenet Reply Comments in Docket 20097, February 24, 1973, p.14.

Obviously, a grant of the subject application would simply give Telenet a "hunting license" to seek such an agreement, a clear perversion of the serious public interest purposes of a certificate of public convenience and necessity.

2. We cannot believe that the Commission intends to transform itself into a "hunting license" bureau. We therefore assume that the direction, contained in the letter of July 16, 1976 from the Chief, Common Carrier Bureau--that comments upon the non-contractual aspects of the instant 47 page application be submitted upon one week's notice— was simply a housekeeping measure designed to have the pleading cycle completely closed before dismissal of the in[illegible]plication. Nonetheless, ITT Worldcom is constrained to point out certain presumably inadvertent language in that letter which, if taken literally, would evidence a gross misunderstanding by the Commission of the position of ITT Worldcom (and of the other carriers which are seeking rejection or dismissal of the instant application).

3. Such letter incorrectly characterized ITT Worldcom's contentions as being that a "formal" agreement had to be "filed" before the Commission co act on Telenet's application. As shown in our prior pleadings, the subject

application must be rejected because Telenet has no agreement--formal or informal--to operate in conjunction with the BPO, nor even an informal preliminary understanding along these lines. While it would, of course, be a physical impossibility to file a nonexistent agreement, it is the complete absence of any (even preliminary) meeting of the minds --and not the failure to satisfy the technical filing requirements under Part 43 of the Commission's Rules and Regulations --that is at the heart of this matter.

4. Beyond the dispositive absence of any operating agreement, there are several deficiencies in the instant application which must serve as a bar to the grant thereof. As shown in the following paragraphs, these include the proposed use of an unauthorized international gateway, the lack of any reliable economic justification data and, if Telenet's own position on cross-subsidization can be taken seriously, the danger that such will transpire as between its domestic and proposed international services.

5. In frustration of the proceedings in Docket 19660, Telenet seeks herein to operate an international service from Boston, which is not an authorized gateway. Since this is clearly impermissible, and the Boston "gateway" is a material part of Telenet's proposal,[3]

---

[3] See Application, pp. 8-10.

its application should be denied on this ground alone.

6. Moreover, the Commission cannot even begin to evaluate the economic justification contained in the instant application. As initially submitted, said application contemplated two satellite circuits, one routed via the Atalantic "major path" satellite and the other via the Atlantic "primary" satellite. The BPO, however, in its letter of May 25, flatly stated that it "has no current plans which would enable it to establish such circuits via the Atlantic major path satellite." Thereafter, Telenet, by letter of June 18, 1976, in effect, amended its application so as to now seek authorization for only the primary satellite circuit but without the submission of new economic justification. Whatever the initial validity of the economic justification data contained in Telenet's original, two satellite application, such data are now, at best, meaningless.

7. In this connection, we further note that while Telenet's application was premised upon the use of 50 Kbs circuits, the BPO's May 25 letter stated that it "envisaged the establishment" of 9.6 Kbs circuits. As Telenet itself stated in opposing with AT&T's DATAPHONE Switched Digital Service application:

> " . . . it is clear that its application utterly fails to addres the question of demand for lower speed switched digital servi Its cost and rate studies, and its burden tests, are based o assumption that only 56 Kbps service will be offered . . . I axiomatic that before the Commission may certify that the pu convenience and necessity would be served through grant of an application, it must first know what the applicant propose and the applicant's showing of need, costs, and rates, must relate to the service proposed."[4]

8. Insofar as Telenet's meaningless data may be accepted at face value, further improprieties become evident. For one thing, such data appears to be based upon incremental costing, as its economic projections deal simply with the generation of sufficient revenues to cover expenses but do not even attempt to set forth a rate of return or even present figures sufficient to calculate the same.[5] It is, however, obvious that, during the first two years of Telenet's proposed service, it could not possibly earn a reasonable rate of return.[6] And then, in an unexplained exercise, Telenet projects a sudden and incredible 140-fold increase in net income in its third year.[7]

9. Finally, as with its position on the need for an operating agreement and the question of transmission speed, Telenet must fall

---

[4] Telenet Petition for Relief, FCC File No. W-P-C-778, May 7, 1976, pp. 25-26 (emphasis supplied).

[5] See Application, p. 41.

[6] According to Telenet's own figures, it would have a $132,000 loss in "Year 1" and bearly break even in "Year 2." Application, p. 41.

[7] To the extent that this projection is purportedly derived from "Telenet's experience in introducing a wholly new service into the domestic marke (Application p. 43), there is no basis for concluding that experience in domestic market, where Telenet provides both ends of the service, has correlation to the realities of the international market, where Telenet to provide one end of the service.

victim to its own rhetoric on the matter of cross-subsidization. In opposing a recent domestic service application of ITT Domestic Transmissions Systems, Inc. (ITTDTS), Telenet contended that the applicant should have provided a "full explanation" of its "operating and marketing relationships with other ITT subsidiaries," including ITT Worldcom, and that "ITTDTS' failure to supply such information renders its application fatally defective."[8/] Whatever, if any, the dangers of cross-subsidization as between two operationally independent ITT subsidiaries, such dangers are immeasurably increased where, as here, not only are interconnected domestic and international facilities to be operated by the same corporate entity, but also the international segment thereof is offered on the basis of incremental costing.

Telenet cannot have it both ways. Having contended that ITTDTS' application should be denied, it cannot consistently maintain that its own should be granted.

[8/] Reply of Telenet Communications Corporation to "Opposition of ITT Domestic Transmission Systems, Inc.," FCC File No. W-P-C-672, April 13, 1976, pp. 2,3.

CONCLUSION

For the reasons stated above and in ITT Worldcom's Petition for Rejection and Reply, the instant application of Telenet should be rejected or denied.

Respectfully submitted,

ITT World Communications, Inc.

By:

Joseph J. Jacobs

Theodore J. Fischkin

Its Attorneys
67 Broad Street
New York, New York 10004

Dated: July 23, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION)
)
Application for Authority to Extend)
Packet-Switched Data Communications) File No. I-T-C-2634
Service from the Continental United)
States to the United Kingdom and)
Points Beyond)

TRT TELECOMMUNICATIONS CORPORATION'S PETITION TO DENY

TRT Telecommunications Corporation (TRT) hereby petitions the Commission to deny the above-captioned application filed by Telenet Communications Corporation (Telenet) on May 4, 1976. In support hereof, TRT respectfully states as follows.

As shown in the pleadings previously filed by TRT and other parties with respect to the instant application, Telenet has not secured the agreement of its punitive United Kingdom correspondent, the British Post Office (BPO), to join in the provision of the hypothetical service proposed in its application.

The Common Carrier Bureau in its letter dated July 16, 1976 addressed to ITT World Communications Inc. (ITT), RCA Global Communications, Inc. (RCA), Western Union International, Inc. (WUI) and TRT states the substance of the IRC's prior comments in this proceeding "has been that the application should be dismissed because of the absence of a formal agreement between the British Post Office and Telenet." However, TRT's position is not that Telenet's application should be dismissed because of the absence of a "formal" agreement. TRT's position is that Telenet's application should be dismissed because of the absence of any agreement by the BPO, formal or otherwise, to interconnect with Telenet on a direct circuit basis.

The Bureau further states that, "The Rules of this Commission do not require that such an agreement be filed before an application can be accepted for filing." Although this statement of the Bureau's is correct in the sense that Section 63.01 of the Commission's Rules and Regulations does not contain an express requirement for the submission of operating agreements with foreign correspondents as part of applications pursuant to Section 214, the existence of such an agreement and the disclosure of the terms thereof quite clearly are necessary before the Commission can find that a grant of an application for international service is required by the public interest, convenience and necessity. In past instances when applications for international service have been prematurely filed prior to the conclusion of an operating agreement for the proposed service, the Bureau staff has deferred processing until this deficiency is corrected. However, if the Bureau now believes that it is better procedure to proceed to process Telenet's application, then the application must be denied.

WHEREFORE, TRT respectfully requests the Commission to deny the above-captioned application of Telenet.

Respectfully submitted,

TRT TELECOMMUNICATIONS CORPORATION

BY: Roderick A Mette
Roderick A. Mette
Vice President & Counsel

1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

July 23, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION)
)
Application for Authority to) File No. I-T-C-2634
Extend Packet Switched Data)
Communications Service from)
the Continental United States)
to the United Kingdom and Points)
Beyond.)

PETITION TO DENY OF WESTERN UNION INTERNATIONAL, INC.

On May 4, 1976 Telenet Communications Corporation (Telenet) filed the above-captioned application to acquire facilities to extend its domestic packet-switched service to the United Kingdom and beyond. Western Union International, Inc. (WUI) hereby petitions the Commission to deny Telenet's application.

A. Telenet's Application Is Fatally Defective

1. After the filing of Telenet's application, which purported to be based upon an agreement with the United Kingdom Post Office (UKPO) to interconnect with Telenet, the UKPO, by letter dated May 25, 1976, clearly stated that it had reached no agreement to operate directly with Telenet nor to provide the matching facilities neces-

sary to establish such a service.

2. Following the UKPO's denial of the existence of any agreement with Telenet, WUI and several other international record carriers filed comments with the Commission demonstrating that Telenet's application is fatally defective since, absent a UKPO agreement to interconnect with the facilities requested in Telenet's application, the service proposed by Telenet can never be provided.* Thus, WUI and other carriers argued that Telenet's application should not have been placed on public notice for the reason that any substantive consideration by the Commission or carriers, of a service offering which is impossible of implementation, would be wasteful of the time and resources of all concerned.

3. Telenet, in its Opposition, dated June 15, 1976, to the comments of WUI and ITT, argued that a "formal agreement" with the UKPO is not a prerequisite to the filing of or grant of Telenet's application. The Commission, by letter dated July 16, 1976, stated that: "The Rules of this Commission do not require that such an [formal] agreement be filed before an application can be accepted for filing" and called for substantive comments on Telenet's application by July 23, 1976.

4. It has never been WUI's position that the Commission's Rules require the filing of a formal operating

---

* See WUI's letter, dated June 7, 1976; ITT World Communications Inc.'s (ITT) Petition For Rejection, dated June 7, 1976; RCA Global Communications, Inc.'s (RCA) Comments In Support Of ITT Petition, dated June 15, 1976.

agreement before an application can be accepted for filing. Rather, WUI believes that an application may not be granted in the absence of an agreement -- formal or otherwise -- with the relevant foreign correspondent and, in view of the fact that Telenet has no agreement of any kind with UKPO, substantive consideration of Telenet's application would be wasteful. WUI continues to hold this position and submits that Telenet's lack of such an agreement is, in and of itself, ample ground for Commission denial of the instant application.

B. Telenet's Application Is Inconsistent With The Facts

5. The Telenet application is factually inaccurate as to a number of key elements and therefore cannot be granted. For example:

(a) Telenet's application says that "the BPO has agreed to furnish and operate matching facilities..." The fact is the UKPO has not agreed.

(b) Telenet's application says that service will be furnished via "similar packet switching equipment installed and operated by the BPO at a BPO site in London, England". The fact is that UKPO has made no decision with respect to the kind of packet switching equipment it may install at its site.

(c) Telenet's application says, or at least very strongly infers, that Telenet has an agreement with the UKPO. The fact is that it has not.

(d) The Telenet application says that both circuits would be routed via the Atlantic satellites. The fact is that the UKPO has not so agreed.

(e) The Telenet application says that service will be via circuits operating at 50,000 bits per second. The fact is that the UKPO has not so agreed.

(f) The Telenet application says that packet switching "is a fundamentally new overseas service, unlike any existing overseas data communications service". The fact is that it is not "a fundamentally new overseas service". Packet switching is a sub-classification of message switching technology.

(g) The Telenet application says that its proposed rates are based on an accounting rate of $9.00 per kilopacket. The fact is that the accounting rate of $9.00 per kilopacket is not the current UKPO position.

C. The Requirements Of Telenet's Customers And Other Users Can Best Be Met By WUI

6. Telenet's application refers to a customer need for international service utilizing packet switching technology. However, Telenet is a domestic carrier whose application would provide overseas access only to its own

domestic network. WUI, as a full service international carrier, is ready, willing, and able to provide international access to all U.S. subscribers. To this end, WUI has been negotiating with the UKPO and various other foreign administrations to meet the overseas needs of data-base and remote-computing customers.

7. By virtue of its leadership role in international telecommunications WUI is in a position to serve the needs of all of it's customers in the United States. For all of its services, WUI serves its customers directly in the gateways. In the "hinterland" WUI operates through interconnecting carriers and is willing to enter into interconnecting agreements with all domestic carriers on fair and nondiscriminatory terms. In this way, the entire U.S. public can best be served.

D. Present Status Of International Packet Switching Service

8. In February 1974 WUI conducted a seminar on International Digital Data Service at which time, as the Commission's Staff will recall, there was open discussion on packet switching services. Since that date WUI has been actively pursuing the question of packet switching service with all of its overseas correspondents. During the past year WUI's representatives have met on a great number of occasions with the UKPO and WUI's other overseas partners to discuss the technical, marketing, commercial and tariff aspects of this service. Since January of this year a

number of developments have occurred. First, CCITT developed a recommendation regarding the technical protocols for interfacing users' computers with the packet switching network. However, no such recommendation has been forthcoming from CCITT in connection with international standards or inter-network standards. This work is underway but obviously needs to be completed before compatible networks can be established. In addition, since the beginning of this year, CEPT has had at least one meeting on the question of packet switching. This meeting, although useful, reached no decision. A further meeting is planned later this year.

9. Despite WUI's leadership role in international data communications, and despite all the meetings and exchanges of communication that have taken place to date on the various aspects of packet switching service, WUI hereby certifies that, to the best of its information and belief based upon an extremely active international participation on this subject, no agreement has yet been reached on any aspect of intercontinental packet switching service. Although there appears to be strong interest developing abroad and despite WUI's active involvement in the subject of packet switching service, the matter as of today is premature.

WHEREFORE, in view of the facts that (i) Telenet's application is fatally defective, (ii) Telenet's application is inconsistent with the facts, (iii) WUI can better meet the public needs, and (iv) international packet switching is premature as of this date, WUI submits that Telenet's application must be denied.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Kathryn E. McDonnell
Its Attorney

One WUI Plaza
New York, New York 10004

Dated: July 23, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
TELENET COMMUNICATIONS CORPORATION	)	
	)	
Application for Authority to Extend Packet-Switched Data Communications Service From the Continental United States to the United Kingdom and Points Beyond	)	File No. I-T-C-2634

To: The Commission

COMMENTS

RCA Global Communications, Inc. (RCA Globcom) hereby offers its comments pertaining to the aforecaptioned Application of Telenet Communications Corporation (Telenet).

Telenet's Failure to Obtain An Operating Agreement Should Result in a Dismissal of its Application

As has been recounted in previous related letters and pleadings herein, Telenet currently has no operating agreement with the British Post Office (BPO) so as to permit it to provide the service it proposes in its Application. In reality, then, Telenet is no more capable of furnishing overseas service now (and in the foreseeable future) than it could have furnished domestic service prior to the implementation by AT&T and other underlying carriers

---

* In Re Application of Telenet (P-C-8750), 46 F.C.C. 2d 680 (1974).

of tariff provisions permitting Telenet to resell WATS and certain Private Line services.* We are thus at a loss to understand Telenet's persistence that the instant Application immediately be considered on "the merits".** Addressing its merits, in the circumstances, amounts to a needless exercise for which it is difficult to justify an expenditure of the resources of the carriers or the Commission.

We have noted the exchange of correspondence between Telenet and the BPO with a view toward ascertaining the probable status of the relationship between these. Based, in particular, on the BPO letter of May 25, 1976, the conclusion is inevitable that the BPO's invitation to Telenet (or any other carrier for that matter) to negotiate to provide "interim arrangements" for a

---

* As indicated below in greater detail, the unique status of "value-added carriers", of which Telenet is one, is an important consideration. Value-added carriers do not construct their own transmission facilities. Rather, they lease these at tariff rates, as would any customer, from appropriately authorized entities, i.e., "underlying carriers". Essentially, value-added carriers are no more than mere "customers" of underlying carriers with the noteworthy exception that they are permitted to resell an enhanced telecommunications service to their "patrons". See, e.g., pertinent provisions in AT&T tariffs 259, 260 and 267 pertaining to "composite data service" and "composite data service vendors".

** See, e.g., Telenet "Motion to Strike", dated July 13, 1976, at 3; Letter from Telenet counsel to F.C.C., dated July 1, 1976, at 4.

U.S.-U.K. link erroneously was construed by Telenet to be an "offer" which, of course, Telenet understandably was prompt to "accept". Clearly, Telenet was far afield in its reaction.*

In view of the above, we submit that the lack of an operating agreement between Telenet and the BPO renders premature the subject Telenet Application and, therefore, it must be dismissed or otherwise rejected. Without prejudice, however, to our position in this regard, we shall undertake to address certain other matters regarding the instant Application and the environment in which it has been submitted.

---

* We believe that the subject Application was, in essence, an offer by Telenet to the BPO to interconnect according to pertinent terms set forth in the Application. There can be little question that the May 25 BPO Letter constitutes a rejection of such offer.

Telenet/BPO Technical Interconnection is Premature In the Present Circumstances

Apart from the subject Application's prematurity in terms of its preceding an appropriate operating agreement, the proposed technical interconnection is premature for another reason: The United Kingdom does not yet have a packet-switching network, as such is projected "to be in service in about three years time...."* Hence, initiation of commercial packet-switched communications between the U.S. and the U.K., not to mention points beyond, appears to be several years away. The limited experimental system which the BPO wishes to implement "on some expedient basis" will not become operational before at least the last quarter of 1976 and, when it does, it is expected that only approximately 30 initial subscribers, many of which are U.K. government agencies and departments, will be in a position to utilize the experimental network. Accordingly, there simply is no factual basis to support the apparent urgency which Telenet attaches to its Application, nor is there a basis to suggest that anything less than immediate consideration of such Application "could lead to dilatory conduct".**

It Would Be Inprovident to Create International Communications Policy on an Ad Hoc Basis

Recent developments in the international telecommunications field cause us great concern and, we submit, must be carefully reviewed and considered from an overall policy perspective.

---

* BPO Letter to Telenet, dated May 25, 1976

** See Letter to IRCs from Walter Hinchman, Chief, FCC Common Carrier Bureau, dated July 16, 1976.

The instant Application is a manifestation of what appears to be a developing Commission policy to treat each individual application affecting international data telecommunications service on an ad hoc basis, without reference to potential impact beyond the application itself.

We respectfully submit a major step was taken toward fragmenting the international data market by the decision permitting the potential extension of AT&T Dataphone service to all those points AT&T is authorized to serve with its voice services.* There are pending before the Commission now three separate applications of Graphnet to extend its domestic facsimile services to Canada and Mexico, Hawaii, and to eleven European nations. There are a number of other domestic specialized common carriers, both authorized and with applications pending, standing by, we believe, for the appropriate opportunity to seek authorization to furnish their present and prospective services world-wide. Further, in its recent Decision in Docket F.C.C. No. 20097, the Commission appear to make applicable to international record carriers its decision therein to require the removal of any tariff restrictions on customer resale and sharing of IRC services.** Hence, if this decision becomes effective, an unknown number of additional competitors likely will be introduced into the international data communications market place.

---

* In Re AT&T Overseas Dataphone Service (Docket F.C.C. No. 19558), FCC 76-10, released January 19, 1976.

** In Re Resale and Shared Use, FCC 76-641, at Para. 74.

While the data communications market of the future may prove to be substantial, it certainly cannot be described in those terms in its present state of development. In this regard, we find Telenet's market projections, and the methodology used to derive those projections highly suspect.* In any event, the Commission must act in a prudent fashion in undertaking to authorize the further proliferation of carriers serving the international data market. The international voice-record carriers have already been dealt a serious blow by the authorization for the extension of AT&T Dataphone Service. However, the Commission noted that it would look to the existing international carriers to provide at least the more sophisticated types of data transmission service.** Consideration now by the Commission of the instant Application, as well as others, indicates that the Commission is on the verge of diluting further the "sophisticated" segment of the international data market by weighing seriously the entrance of additional carriers and other communications entities.

All of this is taking place without due Commission consideration of the number of communications providers that the existing international data market is capable of supporting. In this regard, we note Telenet's assertion that:

---

* See Telenet Application, at 42-45. There is no explanation offered as to the steps utilized to derive projected "megabit traffic" from the market analysis methodology used. Thus, there is no means available to test the projections which reveal an approximate 15-fold increase in Telenet traffic by 1979.

** *In Re AT&T Overseas Dataphone Service*, FCC 76-10, at Paras. 12-13.

> "...(T)he level of overseas data transmission is presently so limited (relative to the levels of domestic data transmission within the U.S. and U.K.) that very little historical or statistical information regarding overseas data traffic exists...."*

While, of course, Telenet predicts rapid and identifiable market growth were it to obtain the authorization it is seeking, the fact remains that it is not at all clear as to the nature and extent of that market, particularly whether it can support the number of carrier-entities intending to enter it.

Application of Appropriate Legal and Policy Standards

As stated by the U.S. Supreme Court, prior to authorizing new competitive entry the Commission must find both that such competition is "reasonably feasible" and "that there be ground for reasonable expectation that competition may have some beneficial effect."** For reasons set forth herein, we do not believe that either of these findings can be made.

There currently are four carriers providing data communications services to Europe,*** and a fifth will be added if AT&T is able to obtain appropriate authorization to extend its Dataphone Service world-wide. At a given point, additional competition among common carriers no longer benefits but, instead, becomes a detriment to the public. We submit that such point has been reached.

---

* Telenet Application, at 42.

** FCC v. RCA Communications, Inc., 346 U.S. 86, 96-97 (1953); See, also, Hawaiian Telephone Co. v. FCC, 498 F. 2d 771 (D.C. Cir. 1974).

*** These are RCA Globcom, International Telephone and Telegraph, Western Union International, and TRT Corporation.

Moreover, in a period of protracted world-wide inflation and constantly rising operating costs, the established international voice-record carriers have not only failed to receive any rate increases, as have been granted to other public utilities, but in fact have lowered their charges to the public for many services. In addition, the Commission recently has brought to bear strong pressures upon these to cause further rate reductions.* We submit the Commission must now squarely face the question whether it can realistically expect this trend to continue indefinitely if it elects to follow a course with respect to the instant Application and others which, if granted, could only fragment further a key market and divert a portion of total industry revenues, including those from traffic growth, to a sixth carrier. We foresee in this regard that a grant of the instant Application will have an adverse impact on the existing carriers.**

It would be easy to characterize our position as "protectionist" and to view our concerns as motivated solely by self-interest. This, however, would be inappropriate in light of the fact, as conceded by Telenet, that little is known about the nature and extent of the relevant market for data communications and the number and variety of carriers it is capable of supporting. We thus believe that prior to any grant of authorization to Telenet or any other entity with pending or future applications, the Commission must undertake to evaluate such market and, thereafter, re-evaluate and modify existing policies if warranted.

---

* See, e.g., In Re AT&T et al. (Docket F.C.C. No. 20694), 57 F.C.C. 2d 1103 (1976), the Transpac-2 Order; In Re Integration of Rates and Services Between the Mainland U.S. and Hawaii, Alaska and Puerto Rico/Virgin Islands (F.C.C. File Nos. W-P-C-649 et al.), FCC 76-665, released July 20, 1976.

** Morover, we submit that consideration of the instant Application would be inconsistent with policy standards established in the TAT-6 Decision, 35 FCC 2d 801, 823 (1972), as reaffirmed in the TRT Italy Reconsideration Order, 40 F.C.C. 2d 1168, 1174-75 (1973). These require that an overall review be undertaken before the Commission authorizes additional competition for record services to points in Europe generally.

We are constrained to emphasize that existing Commission policies in certain segments of the domestic communications market were never intended to be applicable in the international field.* Nor, for that matter, can such domestic policies, as implemented, be relied upon by this Applicant and others to support their requests for international authorizations where the environment is drastically different.

---

* See Specialized Carriers Decision, 24 FCC 2d 318(1970), 29 FCC 2d 870, reconsideration denied, 31 FCC 2d 1106 (1971); Establishment of Domestic Communications Satellites by Non-Governmental Entities, 35 FCC 2d 844, 38 FCC 2d 665 (1972).

In this regard and to further emphasize the distinction that exists, we note that the U.S. international carriers provide "half" a service and rely on their overseas partners to provide the corresponding half. The problems of maintaining a strong, viable international telecommunications capability for the United States has historically been made difficult by the multiplicity of carriers which constitute the U.S. international telecommunications industry. The "many vs. one" relationship permits the overseas administrations to play one U.S. carrier off against another. These divide and conquer tactics increase with the addition of each new U.S. international carrier.

We believe that this factor and the others indicated herein must be evaluated carefully by the Commission prior to its consideration of this or any other application by a new entity seeking to furnish international services.

Commission Policy Requires That Telenet Obtain International Services and Facilities, if at all, From Existing International Voice-Record Carriers

As indicated in the first footnote at Page 2, supra, Telenet is a "customer" of the "underlying carrier" from whom it obtains transmission services for incorporation into its own service offerings. Accordingly, it possesses more the attributes of a "user" than it does those of a common carrier. In any event, its intention to subscribe to Comsat service directly renders its Application inconsistent with the Commission's Authorized User Decision, wherein the Commission stated:

> "...(I)t would be in derogation of the policy of the Act [Communications Satellite Act] to permit Comsat to compete with conventional carriers in furnishing to users

> those communications services and channels which customarily and conventionally are or can be furnished by such carriers within the framework of their general tariff offerings."*

Telenet assumes, erroneously we believe, that either its existing domestic authorizations or the instant Application, if granted, or both, render it eligible as an "authorized user" to circumvent existing carriers for obtaining transmission facilities by dealing directly with Comsat for these. We submit that the clear rationale underlying this Commission policy was, inter alia, "to take steps to assure that the conventional carriers responsible for general service" can provide adequate service at reasonable charges and to insure that the presence of Comsat would not "result in an overall deterioration of public communications services".**

In this regard, we note that either Telenet or its customers can obtain international service via the facilities of RCA Globcom. Thus, we believe that our services can link Telenet's domestic operations with comparable operations in countries abroad. We believe that we can do everything necessary to accomplish U.S./U.K. interconnection using procedures, equipment and technology at least as good and in some respects better than would be possible under the Telenet proposal. Not insignificantly, this appears to us to have been the approach recommended by the BPO when it stated in its May 25 Letter:

---

* 4 F.C.C. 2d 421, 431 (1966); 6 F.C.C. 2d 593 (1967). Graphnet, another value-added carrier, also has proposed to deal directly with Comsat for obtainment of facilities to reach Europe. See FCC File No. I-P-C-11 and 11-A.

** 6 FCC 2d 595. It should be noted that by no standard or measure can it be said that Telenet offers or proposes to offer "general" or "public communications services".

> "The Post Office did not consider it appropriate to make any proposals in relation to how the international facilities should be provided to interconnect with the Post Office, in the absence of any agreement between Telenet and any of the recognized international carriers in the U.S.". Emphasis added.

The costs to Telenet of using an RCA Globcom interconnect would be substantially lower than those it would incur if it proceeded with a direct connection. This would be especially true in the early period of the proposed offering when both the Telenet service and the market therefor are developing. As we perceive no basis upon which to agree with Telenet, we take issue with its statement in its letter of June 18, 1976 to the BPO that the mode of interconnection proposed by Telenet in its Application is "the most economic and efficient method".

Telenet Should Not Be Permitted To Provide International Services Through its Domestic Enterprise

By virtue of receipt of both domestic and overseas authorizations, Telenet would obtain an undeserved competitive advantage over carriers precluded by Commission decision from furnishing domestic and international services through the same corporate entity. Consistency of Commission regulation, therefore, requires that Telenet's domestic franchise not be extended to the international field or that such franchise be extended only through a separate corporate enterprise which would deal with its domestic counterpart at arm's length. It is significant to note that such position is consistent with one assumed by Telenet in respect of AT&T's provision of monopoly and competitive services through the same corporate entity.* In this regard, we would urge that even-handed regulation would not require that Telenet be treated any differently than other carriers subject to the Commission's jurisdiction.

---

* See Telenet "Petition for Relief" (File No. W-P-C-778), dated May 7, 1976.

Conclusion

The instant Application is premature and should be rejected by the Commission on this ground alone, for unless or until an operating agreement is entered between Telenet and the BPO, examination into the merits of the Telenet Application is an academic exercise. In any event, in view of this Application and others involving proposed new carrier entry into the international communications field, the Commission, pursuant to applicable legal and policy precedents, must first address and satisfy the broad public interest question as to whether, in consideration of all the attendant facts, including an examination of the relevant market and the probable effect upon existing carriers which furnish vital public services, such additional entry is warranted.

In view of the foregoing, the instant Application should be denied.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

F. J. DeRosa
60 Broad Street
New York, New York 10004

Donald J. Elardo
2030 M Street, N.W.
Washington, D. C. 20036

Its Attorneys

Dated: July 23, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION)
)
Application for Authority to) File No. I-T-C-2634
Extend Packet-Switched Data)
Communications Service from the)
Continental United States to the)
United Kingdom and Points Beyond)

To: The Commission

OPPOSITION
OF
TELENET COMMUNICATIONS CORPORATION

Philip M. Walker
Vice President and General Counsel
Telenet Communications Corporation
1050 Seventeenth Street, N. W.
Washington, D. C. 20036

Donald E. Ward
Law Offices of Donald E. Ward
1050 Seventeenth Street, N. W.
Washington, D. C. 20036

August 3, 1976

TABLE OF CONTENTS

Page

I. SUMMARY OF ARGUMENT 1

II. THE APPLICATION IS NEITHER INCOMPLETE NOR PREMATURE 6

A. Telenet and the BPO Have Reached Preliminary Agreement Concerning the Proposed Service 6

B. Telenet's Application is Timely and Not Premature 8

III. THE APPLICATION IS FACTUALLY ACCURATE, AND THE PROJECTIONS CONTAINED THEREIN ARE REASONABLE AND VALID 16

A. Telenet's Application is Factually Correct and Contrary Claims by the IRCs are Themselves Inaccurate and Misleading 16

B. Telenet's Market and Financial Projections are Reasonable and Based Upon Sound Methodology 24

IV. THE ALLEGED "POLICY" ISSUES ARE SPURIOUS 28

A. The "Gateway" Issue has No Legal or Practical Significance to the Instant Application 28

B. There is No Legal or Policy Requirement for Telenet To Offer the Proposed Service Through a Separate Corporate Entity 29

C. Entry by Telenet Into the International Data Communications Market Is Feasible And Will Have Beneficial Effects. 32

D. Telenet Qualifies As A Customer For Comsat Circuits: A "Middleman" Role For One or More IRCs Would Only Add To The Cost Of The Service And Detract From Its Quality, With Absolutely No Offsetting Benefits. 42

V. CONCLUSION 44

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of TELENET COMMUNICATIONS CORPORATION Application for Authority to Extend Packet-Switched Data Communications Service From the Continental United States to the United Kingdom and Points Beyond	)	File No. I-T-C 2634

To: The Commission

OPPOSITION

Telenet Communications Corporation, by its attorneys, hereby submits its Opposition to the Petitions to Deny the above-captioned application, filed by ITT World Communications, Inc. (hereinafter "ITT"), Western Union International, Inc. (hereinafter "WUI"), and TRT Telecommunications Corporation (hereinafter "TRT"), and to the "Comments" of RCA Global Communications, Inc. (hereinafter "RCA"), each of which was filed on July 23, 1976.

I. SUMMARY OF ARGUMENT

Telenet's application for authority to institute a public packet-switched data communications service to the United Kingdom was filed with the Commission on May 4, 1976, and copies thereof were served upon each of the IRCs. After more than two and one-half months of study, the IRCs have filed with the Commission pleadings so lacking in substance that one must question their motivation. For example . . .

(a) In [illegible] clear face of repeated assurances by the British Post Office (hereinafter "BPO") of its desire to institute the proposed service by the end of 1976, WUI and RCA characterize Telenet's application as "premature";

(b) Despite the specification by both the BPO and Telenet of the essential ingredients of a yet-to-be formalized operating agreement, and despite the understandable reluctance of the BPO to enter into a formal agreement with Telenet in advance of the latter's certification as an international carrier, all four IRCs continue to argue that the lack of such an agreement is fatal. Adoption of such a position by the Commission would mean that there will be no new international carriers -- ever!

(c) In an attempt to portray Telenet's application as bloated with inaccuracies, WUI places before the Commission a number of erroneous and misleading statements, which may reveal as much about its lack of understanding of the state of the art of packet switching as about its pleading standards.

(d) In a transparent attempt to create "policy" issues where none exist, ITT claims that Telenet's application to use its Boston Operating Center as one of two international nodes is in "frustration" of the Commission's "gateway" proceedings, despite the fact that ITT itself has pending an application to specify Boston as an international gateway, and despite the total inapplicability of the gateway concept to the proposed service.

(e) In the same vein, RCA claims that Telenet is ineligible to obtain circuits directly from Comsat, but can only acquire them through the established IRCs, despite the fact that Telenet is an established domestic carrier and would become an international carrier upon grant of the instant application.

(f) The Goliaths of the international telecommunications industry, RCA and ITT, assert that Telenet should be required to enter the international market only through a separate entity, lest cross-subsidization diminish their ability to compete. Since Telenet has yet to reach the break-even point in its domestic operations, it seems obvious that cross-subsidization is not a plausible threat: Of greater significance, because of the Commission's "open entry" policies as to value-added and resale services, new market-place competition is a greater deterrent to any potential cross-subsidization than would the creation of an administratively useless separate entity.

(g) In what has by now become a tired refrain, chanted by the established carriers at the first hint of a new service offering, RCA decries the Commission's ad hoc consideration of applications such as Telenet's, and by implication suggests that the time has come for a broad inquiry into the question of the need and viability of further competition in the international communications field. Similar arguments were quickly disposed of by the Commission in certificating Telenet's domestic service two years ago.

While the IRCs are unanimously opposed to the Telenet application, the prospective users of the service have just as unanimously supported the application. Thus, the Commission need not take Telenet's word for the fact that the existing IRCs have failed to offer data communications services geared to the need of the users --- the users themselves have spoken.

In another context, ITT has endorsed the technology and service concept upon which Telenet's proposal is based, describing packet switching as "an innovative service technique for transmission and error correction of digital data material," and stating its belief "that the use of packet switching techniques will provide customers with a type of data transmission which has a lower incidence of error than the IDDS service proposed by WUI without the utilization of duplicate facilities on the circuit segment between operating centers." (See "Petition to Deny", filed April 7, 1975, re File No. I-T-C-1896-41).

Also in another context, TRT has accurately predicted the IRC reaction to Telenet's application. In its "Comments" of August 25, 1975, concerning WUI's application for experimental authority to provide a packet switched service interconnecting the ARPA network in the United States with a comparable network in the United Kingdom (File No. I-T-C-1896-46), TRT cautioned:

> "[B]ased upon its past experience in encountering the massive opposition of its competitors, including WUI, to TRT's attempts to compete with them, TRT is apprehensive lest WUI, after obtaining the authority sought in its instant application, might use that authority to preclude the competition of TRT (or other international record carriers . . .) who might subsequently seek to participate in the offering of an international packet-switching service."

Quoting from the Commission's Order granting the first domestic application for packet switched service (Packet Communications, Inc., 43 FCC2d 922 [1973]), TRT urged:

> "An 'open entry' policy with respect to the provision of the international services contemplated by WUI's application is particularly appropriate, given the nature of the services which WUI proposes."

Telenet agrees, and submits that such a policy is inherent in the Commission's July 1, 1976 Report and Order in Docket No. 20097, decreeing resale and shared use restrictions unlawful.

II. THE APPLICATION IS NEITHER INCOMPLETE NOR PREMATURE

A. Telenet and the BPO have Reached Preliminary Agreement Concerning the Proposed Service.

All four of the international record carriers (IRC's) assert that for want of an operating agreement between Telenet and the British Post Office (BPO), Telenet's application should be dismissed, rejected, or denied. Characterizing the alleged lack of agreement between Telenet and the BPO, WUI asserts that "Telenet has no agreement of any kind with UKPO...", and ITT alleges that "Telenet has no agreement -- formal or informal -- to operate in conjunction with the BPO, nor even an informal preliminary understanding along these lines," and that there exists "the complete absence of any (even preliminary) meeting of the minds." ITT goes so far as to characterize Telenet as seeking a "hunting license" from the Commission. These allegations are clearly at variance with the facts, as demonstrated by the exchange of correspondence between Telenet and the BPO, filed with the application and under cover of Telenet's June 18, 1976 letter to the Commission.

The Telenet-BPO correspondence demonstrates that Telenet has reached preliminary agreement (or "understanding", or "meeting of the minds", in the words of ITT) with the BPO on the fundamental questions of regulatory importance concerning the proposed service:

*The parties' mutual interest in providing access from Telenet's U.S. network to the U.K.;

*The BPO's willingness to install and operate appropriate packet switching equipment in the U.K. for this purpose;

- *The use of CCITT interface standards in connecting such equipment to Telenet's equipment in the U.S.;
- *The parties' desire to utilize two diversely routed transatlantic circuits operating at 9,600 bits per second (bps) or higher speeds;
- *Each party's willingness to furnish its half of such circuits;
- *The accounting rate to be utilized for the service; and
- *The parties' mutual desire for service to commence by the end of 1976.

Each of these points is expressly stated in the BPO's letter of April 21, 1976, and none of them is in any fashion recanted or modified in the BPO's much-cited letter of May 25. In its May 25 letter, the BPO simply makes clear the preliminary nature of this understanding, observing that "it would be erroneous to conclude that we have reached any formal agreement", and notes that it had not agreed that both of the transatlantic circuits should be routed via satellite nor that both circuits should operate at 50,000 bps. As explained in Telenet's June 18 letter to the Commission, neither of these latter two points is central to the consideration of the merits of the instant application; this topic is dealt with further in section III.A. below.

As explained in Telenet's June 15, 1976 Opposition to WUI's and ITT's petitions for dismissal and rejection, and in Telenet's June 18, 1976 letter to the Commission, the BPO's reluctance to enter into a formal operating agreement with Telenet prior to action by the Commission on the instant application is perfectly understandable. For the BPO to have done otherwise would have given the appearance that the BPO was attempting to establish a new U.S. international carrier -- a role properly reserved to this Commission. However, as Telenet has previously noted (June 15 Opposition, page 3), it will enter into such an agreement with the BPO prior to instituting the proposed service. Such agreement will be promptly filed with the Commission, and grant of this application can be so conditioned if the Commission believes such a condition would be appropriate.

Were the Commission to adopt the position urged upon it by the IRCs, it would effectively institutionalize "Catch 22": The BPO will not enter into a formal agreement without prior FCC certification of Telenet, and the FCC will not grant such certification until Telenet and the BPO have a formal agreement. No public interest would be served through such a result, whose only effects would be to deprive the public of an opportunity to have access to a useful service not currently provided by any of the existing carriers, and to further cartelize an already entrenched oligopoly in the international communications field.

B. Telenet's Application is Timely and not Premature

WUI trumpets its "leadership role in international data communications" and states that "to the best of its information and belief based upon an extremely active international participation on this subject, no agreement has yet been reached on any aspect of intercontinental packet switching service." (Petition, p.6) In particular, WUI alleges that no CCITT recommendation has been developed regarding the interconnection of packet networks, and that consequently, Telenet's application is premature.

It may be true that WUI has not yet reached agreement with the BPO or any other European telecommunications administration on any aspect of intercontinental packet switching service, and it may also be true that it would be premature for WUI to introduce an intercontinental packet service (given WUI's limited experience with packet switching technology) until the specifications and parameters for such a service are fully developed by the CCITT or by other knowledgeable organizations. However, it is grossly incorrect to conclude that Telenet is in the same position as WUI.

As discussed in Section A above, Telenet has reached an understanding with the BPO on all of the material aspects of the proposed U.S. - U.K. packet service, including the technical interface protocol to be utilized. Moreover, Telenet and the BPO are each sufficiently familiar with commerical packet network design and operation to provide creative leadership in the formulation of interconnection procedures and to proceed in the furnishing of service, without awaiting from other parties a detailed interface specification. 1/

Telenet, in fact, has already implemented and put into tariffed commercial operation an international packet switching service between the United States and Canada, in conjunction with

---

1/ It is significant to note that the public packet switching services now emerging worldwide are in large measure the outgrowth of both (1) the research performed in the U.S. by Telenet's parent organization (Bolt Beranek and Newman Inc.) and in England by the National Physical Laboratory, and also (2) the domestic packet services developed by Telenet (in the U.S.), and by the British Post Office (in the U.K.). It is therefore not surprising that Telenet and the BPO are in a unique position to develop and introduce international packet communication service.

the Trans-Canada Telephone System. Thus, Telenet not only brings extensive technical and operational experience to the field of international packet communications, but also commercial experience in the development of suitable pricing structures, equipment interfacing and interconnection arrangements, commercial revenue division procedures, and cooperative working relationships with correspondent communications organizations.

WUI asserts that the "CCITT developed a recommendation regarding the technical protocols for interfacing users' computers with the packet switching network. However, no such recommendation has been forthcoming from CCITT in connection with international standards or inter-network standards." The inaccuracy of this statement confirms WUI's lack of familiarity with the work that has been done in this area during the past year. In fact, the X.25 standard [2] which the CCITT has recommended for interfacing host computers to packet networks is also well-suited for the interconnection of packet networks, and the telecommunications organizations which are primarily responsible for the development of the X.25 standard (Telenet, the Trans-Canada Telephone System, the British

---

[2] "A New Communication Protocol for Accessing Data Networks--The International Packet Mode Interface," by A. Rybczynski (Bell Canada), B. Wessler (Telenet), R. Despres (French PTT), and J. Wedlake (BPO), Proc. National Computer Conference, New York, 1976 and Proc. 3rd International Conference on Computer Communications, Toronto, 1976.

Post Office, and the French PTT) have already reached informal agreement that X.25 is to be the basis for the interconnection of public packet networks. [3]

The process by which the X.25 standard was developed is significant in this regard. It indicates the importance of permitting industry leaders to proceed with the implementation of new systems and services and then to formulate international standards based upon these experiences. The X.25 standard was developed nearly a year after Telenet's own protocol for interfacing computers to its network was developed, and the CCITT was therefore able to draw upon Telenet's experience in actual customer operation with this protocol in developing the X.25 standard. The X.25 standard has been described as "a fortunate accumulation of a diverse set of practical experiences gained from experimental networks in the U.S. (ARPA), France (Cyclades), and England (EPSS), and other countries. The experience of designing and implementing operational networks such as DATAPAC (Canada), Telenet (U.S.), TRANSPAC (France), DDX (Japan) among others, has also provided inputs and an impetus to reach an international agreement at a common carrier level." [4]

Were WUI's position to be taken seriously, that no public packet networks should be interconnected until the CCITT formally approves a complete inter-network interface standard, then Telenet's currently operational service between the U.S. and Canada would not be possible, nor would it be possible to obtain that "fortunate accumulation of a diverse set of practical experiences" (emphasis supplied) which leads to good standards formulation. In fact, since the CCITT plenary meets only once every four years, WUI's position, if adopted, could result in a total halt in progress in international packet communications until 1980, the next CCITT plenary session. Moreover, WUI cites absolutely no regulatory purpose to be served, or public interest objective to be furthered, through such a proposed halt of progress.

---

[3] "International Interconnection of Public Packet Networks," L.G. Roberts, Proc. 3rd International Conference on Computer Communications, Toronto, 1976.

[4] "Compatibility or Chaos in Communications," R.W. Sanders and V.G. Cerf, Datamation, March 1976, p. 53

In this regard, it is important to understand that both the Commission and the public are properly concerned with the nature and cost of the service offering, and the rates charged therefor, but have little need to be concerned with the internal technical details as to how the service is implemented. Moreover, since packet network protocols are software-based, even if the CCITT later approved a different standard than X.25 for inter-network operation, the U.S.-U.K. protocol could easily be changed to conform to the standard.

RCA also argues that Telenet's application is premature since "the United Kingdom does not yet have a packet-switching network, as such is projected 'to be in service in about three years time...'" (Comments, p. 4) RCA goes on to say that

> "The limited experimental system which the BPO wishes to implement on some expedient basis will not become operational before at least the last quarter of 1976 and, when it does, it is expected that only approximately 30 initial subscribers, many of which are government

> agencies and departments, will be in a position to utilize the experimental network. Accordingly, there simply is no factual basis to support the apparent urgency which Telenet attaches to its Application..." (Ibid.)

These assertions regarding the status of packet switching in the U.K. might be attributed simply to RCA's lack of knowledge of the subject, but for the fact that the BPO letter to Telenet of May 25, 1976 (which RCA frequently cites) clearly states the BPO's desire to implement the international service before the end of 1976. It appears that RCA is attempting to lead the Commission into believing that (1) the development of domestic packet switching in the U.K. is years away, and (2) that the provision of international packet service must await the widespread availability of domestic packet service in the U.K. Both assertions are totally incorrect. The facts regarding the status of packet service in the U.K. and their relationship to the Telenet application are as follows:

(1) The British have been pioneers in the development of packet switching technology. In particular, the National Physical Laboratory, as noted above, did much of the basic research in this area beginning in the mid-1960s. In fact, the term "packet switching" is a British term deriving from the envelopes (called "packets" in the U.K.) which are stored and forwarded through the postal network.

(2) In order to develop a commercial packet switching service, the British Post Office announced its intention in August 1972 to develop an Experimental Packet Switched Service (EPSS), which was to be made available to a limited number of subscribers and was ultimately to become the basis for a

National Packet Switching Service (NPSS). A contract for implementation of a three-node network was let to Ferranti Ltd. in 1973, and these nodes have now been installed in London, Manchester, and Glasgow. Field testing is underway and service to initial subscribers is expected later this year. (Contrary to statements by RCA, subscribers are not mostly government departments and agencies. As of May 1975, 40 organizations had given the BPO letters of intent to participate; only a few of these are government agencies. Approximately half are commercial firms, and most of the remainder are universities and research organizations.[5] In any event, the significance of RCA's erroneous assertion is totally lost on Telenet: Is RCA seriously contending that government agencies' needs are less important than those of private companies?)

(3) The British are also active in the development of Euronet, the European-wide packet switching network, which is expected to evolve into an international public network.

(4) In order to provide access to both the Telenet network in the United States, the Euronet network on the continent, and other public packet

---

5/ "Packet Switching Services and the Data Communications User," Ovum Ltd., London, 1976, Part 2, pp. 193-4.

networks, the BPO proposes "to establish an international packet switching gateway in the United Kingdom to be in service in about three years time to provide international packet switched data communications services to all countries, both within Europe and elsewhere... This gateway would provide access...to potential customers in the United Kingdom and in due course interconnection to the national packet switched network (NPSS) which it is hoped will follow the experimental network (EPSS) currently being established." (BPO letter to Telenet, May 25, 1976).

(5) Prior to the establishment of this international gateway, and wholly independent of the development of EPSS, the BPO wishes to provide users in the U.K. with access to Telenet. The BPO states "In the meantime we are considering interim arrangements for the establishment of a packet switched data communications service with the United States on some expedient basis; one which can develop into and be absorbed by the major gateway described above... Because of basic differences in protocols and standards it is not expected that the interim arrangement would be interconnected with the domestic experimental packet switched service (EPSS) opening this year in the United Kingdom."

(*Ibid.*) Further, the BPO has stated "we are anxious to be able to provide this service for our customers at an early date and would hope it possible to commence by the end of 1976." (BPO letter to Telenet, April 21, 1976).

Thus it is clear that the U.K. is quite advanced in the development of its domestic public packet network, that independent of the status of such network it wishes to proceed rapidly (before the end of 1976) with an arrangement for packet switched communications with the United States, and that it does not wish to wait either for the establishment of a major international U.K. gateway node or the full development of its national packet network.

III. THE APPLICATION IS FACTUALLY ACCURATE, AND THE PROJECTIONS CONTAINED THEREIN ARE REASONABLE AND VALID.

A. Telenet's Application is Factually Correct, and Contrary Claims by the IRCs are Themselves Inaccurate and Misleading.

WUI challenges the factual accuracy of a number of elements of the application. Such challenges are without merit, and will be dealt with point-by-point in the order followed by WUI;

(a) WUI alleges that the BPO has not "agreed to furnish and operate matching facilities...", as stated in Telenet's application. However, in its April 21 letter, the BPO said:

> "We would envisage interconnection between our two countries utilising direct satellite or cable circuits operating at 9600 bits/s or higher speeds depending upon the demand, connecting an International Gateway Node in London to the USA. For adequate

> reliability the use of two diversely routed circuits is desirable. The Post Office would provide its half of such circuits and appropriate arrangements would need to be made in the United States to provide the matching halves." (emphasis added)

(b) WUI alleges that the BPO "has made no decision with respect to the kind of packet switching equipment it may install at its site", apparently taking issue with Telenet's characterization of such equipment as "similar" to that operated by Telenet. Such characterization was, of course, made in terms of functional similarity, and such functional similarity will most assuredly exist. As WUI should know, if it is the leader in data communications technology which it claims to be, it makes no difference what make and model of computer equipment the BPO uses to perform the packet-switching function; it is important only that the BPO's equipment and Telenet's are capable of intercommunication via a standard interface protocol (the CCITT X.25 protocol discussed in Section II. B above).

(c) WUI alleges that Telenet has no agreement with the BPO. This issue has been dealt with in section II.A. above.

(d) and (e) WUI contests the application's statements concerning the transmission facilities (satellite) and speed (ultimately, 50 Kbps) of the proposed circuits. It is true, as explained in Telenet's June 18 letter to the Commission, that the application's reference to the use of a 50 Kbps circuit via the Atlantic "major path" satellite was based upon a misunderstanding on Telenet's part as to the immediate availability of facilities in the U.K. to provide such a circuit. Thus, as stated in its June 18 letter, Telenet would have no objection to deferral by the Commission of grant of authority for such 50 Kbps "major path" circuit until the necessary transmission facilities are available via the "major path" satellite. No such difficulty exists with respect to the initial use of a 9.6 Kbps circuit via the "major path" satellite, or with respect to the second proposed circuit--via the Atlantic "primary" satellite which would initially be activated at 9.6 Kbps and subsequently upgraded to 50 Kbps as traffic growth warranted. 6/

6/ ITT claims that Telenet's willingness for the Commission to defer grant of authority for the 50 Kbps "major path" circuit renders its economic projections "meaningless". However, as stated above, it must be understood that Telenet has not "amended its application so as to now seek authorization for only the primary satellite circuit", but rather has simply suggested that it would not object to deferral of authority for the 50 Kbps "major path" circuit until the necessary facilities are available. Such deferral would not affect the 9.6 Kbps "major path" circuit; and the proposed service would initially utilize only 9.6 Kbps circuits in any event. As traffic volume grows, Telenet anticipates that first the 9.6 Kbps circuit via the "primary" satellite would be upgraded to 50 Kbps, leaving the "major path" circuit at its original 9.6 Kbps capacity. Should further growth in traffic volume require a second 50 Kbps circuit before facilities are available to provide such circuit via the "major path" satellite, Telenet would seek modification of its Section 214 authority to enable it to provide such circuit via the "primary" satellite instead.

Such reliance on the "primary" satellite for both 50 Kbps circuits would have no material effect upon Telenet's economic projections. In particular, satellite facility costs would be unchanged, and terrestrial costs would be affected only to the extent of the difference in airline mileage to the two earth stations involved. If the second 50 Kbps circuit were run from Etam to Washington, D.C. in lieu of the proposed Andover-Boston routing, Telenet's costs would be reduced by $2,916 per year or $8,748 over the three years covered by Telenet's projections, which is less than one-half of one percent of Telenet's total costs over such three-year period -- hardly sufficient to render such projections "meaningless"!

The BPO's April 21 letter makes reference only to "9600 bits/s or higher speeds," but it is obvious that upgrading to 50 Kbps capacity will be appropriate as the traffic volume grows; as noted in the application, Telenet estimates that such point will be reached approximately six months from the commencement of service. [7]

---

[7] On the same point, ITT asserts that Telenet's application is "premised upon" the use of 50 Kbps circuits, whereas ITT suggests that the BPO is interested in providing only 9.6 Kbps circuits. Clearly, the application proposes that service be commenced using only 9.6 Kbps circuits, and it requests authority to upgrade such circuits to 50 Kbps capacity when traffic volume so warrants; although the BPO is unwilling at this time to commit itself to such upgrading of circuit capacity, there is no reason to believe that it will not gladly do so when the projected traffic volume materializes. With such traffic projections in mind, there is likewise no reason why Telenet should not request authority at this time for such circuit upgrading. Such a request is wholly consistent with Telenet's statement respecting AT&T's DSDS service, quoted by ITT, that "before the Commission may certify that the public convenience and necessity would be served through grant of an application, it must first know what the applicant proposes and the applicant's showing of need, costs, and rates must relate to the service proposed."

Telenet's concern regarding DSDS related to the ambiguity in AT&T's application as to what service offerings would be made with the proposed facilities, which were concededly well-suited for services other then the 56 Kbps service to which all of AT&T's market and financial projections related. In the instant application, however, the nature of the service offering is clearly stated and well understood -- it is identical to Telenet's domestic service, and it is not dependent upon the number and capacity (at 9.6 Kbps and above) of the transatlantic circuits utilized. The capacity to be employed for such circuits relates only to the volume of customer traffic carried.

As to the question whether transatlantic cable as well as satellite facilities may be utilized, in its June 18 letter Telenet has already advised the Commission that it would request supplemental Section 214 authorization for any such cable circuits, and that such utilization of cable would have no material effect upon the proposed service offering or rates therefor, or -- except for a possible several-month delay in the activation of the second of the proposed 9.6 Kbps satellite circuits -- upon Telenet's utilization of the satellite circuits for which authority has been requested.

(f) WUI maintains that packet switching is not a "fundamentally new overseas service, unlike any existing overseas data communications service," as stated in Telenet's application, but that, instead, "packet switching is a sub-classification of message switching technology." It is true that both packet switching and conventional message switching are both forms of store-and-forward computer-based switching, but here the similarity ends. In its recent and comprehensive analysis of packet switching services (PSS) worldwide, Ovum Ltd., the British consulting firm, concluded: 8/

> * "The future development of computer applications will require a public switched network, dedicated to and optimised for data communications.
>
> * "Two alternative technologies are available, circuit and packet switching; message switching is suitable only for special-purpose networks.

****

8/ Ovum report, op. cit., Part 1, pp. 5-6.

* "The essential difference between packet and message switching is that the former will guarantee to pass a packet through the network rapidly enough for purposes of interactive working and resource sharing between computers; generally under 300 ms in practice.

****

* "The flexibility of a PSS in adapting the service provided and paid for very closely to a user's needs at any given time is one of the most valuable features of packet switching.

* "A public PSS can offer a much higher quality of service than is available from present-day data communications facilities, particularly in such areas as rapid connection, full-duplex communication, low error rate and reliability."

As further indication of the technological significance of packet switching as distinguished from message switching, an excerpt from the citation accompanying the Secretary of Defense Meritorious Civilian Service Award given to Telenet's president, Dr. Lawrence G. Roberts, when he left the Department of Defense in 1973, is relevant:

> "To Lawrence G. Roberts for his outstanding contributions in the fields of computer science and communications while serving as Director of the Information Processing Techniques Office of ARPA, from 1968 to 1973. During this period Dr. Roberts' industry and ceaseless drive have been in large measure responsible for maintaining this Nation's commanding position in computer science.
>
> These same attributes, together with his penetrating insight, have been responsible for the conception, design, development and implementation of the ARPA

> Computer Network [the technological parent of Telenet's commercial packet network], a revolutionary concept which has set new standards of reliability, speed and economy in the communications field. By utilizing extensions of this technology, which will incorporate radio and satellite links as well as insure the security of transmitted data, it appears certain that the major national and worldwide communications systems of the future will be based on the technological foundation laid by Dr. Roberts." (emphasis added)

In further recognition of the value to society of Telenet's technology, developed by Dr. Roberts, the American Federation of Information Processing Societies awarded him in June 1976 the Harry Goode Memorial Award. This award, which is given to only one recipient each year, has previously been given to individuals such as those responsible for the invention of the digital computer and the development of powerful high-level programming languages. 9/

(g) WUI claims that the accounting rate of $9.00 per kilopacket assumed in the application "is not the current UKPO position." Such accounting rate was proposed in the BPO's letter of April 21, and Telenet has received no subsequent rate proposals from the BPO. Telenet has not been privy to any discussions which WUI appears to have had on the subject, and is thus unable to comment meaningfully on WUI's unsupported and vague characterization of the "current UKPO position." Nor is it clear that WUI is privy to the "UKPO position" vis-a-vis Telenet, or whether it is merely assuming that any position which the BPO may

---

9/ Howard H. Aiken, J. Presper Eckert and John W. Mauchly (digital computer); Kenneth E. Iverson (APL language); Grace M. Hopper (COBOL language standards).

hold as to an appropriate accounting rate for a hypothetical service with WUI is automatically reflective of a BPO position as to its accounting rate with Telenet.

The rate indicated in Telenet's application reflected the best judgment of both Telenet and the BPO at that time, and will be revised only if the parties' continuing assessment of the market indicates that such revision is necessary. The possibility of such a rate change, of course, exists with any new service -- either before or after the commencement of service -- if the carrier(s) involved should conclude, based upon new information or insights, that such a change is appropriate; and the Commission can judge the reasonableness thereof when the necessary new or revised tariff provisions are filed.

B. Telenet's Market and Financial Projections are Reasonable and Based upon Sound Methodology.

RCA states that "while the data communications market of the future may prove to be substantial, it certainly cannot be described in those terms in its present state of development." (Comments, p.6) Telenet fully agrees that the present state of development of overseas data communications is quite limited, relative to its potential, but firmly believes that this is largely a result of the fact that the existing IRCs have not furnished services which are either cost-effective or appropriate in terms of reliability and convenience for computer-communications users.

RCA further states that it finds "Telenet's market projections, and the methodology used to derive those projections highly suspect." (Ibid.) No basis is given by RCA for questioning Telenet's projections, no defect in Telenet's methodology (which was fully explained in Telenet's application, at pp. 42-3) is suggested, and RCA is silent regarding the results of Telenet's analysis. Perhaps RCA's silence reflects its belief that Telenet's projections are too conservative, and that the need for overseas packet switching is even greater than Telenet's best analysis indicates.

It should be noted that Telenet has based its market projections on highly reliable source data. First, the nature of the proposed service is fully known--Telenet is not proposing a hypothetical but untried service which is totally new to Telenet or its customers. (Telenet's domestic service has been in commercial operation since August 1975, and the proposed overseas service would be functionally identical.) Second, the prospective users of the proposed overseas service are, in many cases, the same as the users of Telenet's domestic service--thus, these organizations are quite familiar with the overseas service Telenet proposes to offer. Third, as a result of Telenet's experience with its domestic service, the company is quite familiar with the operating costs, the amounts of traffic carried for different types of computer-communication applications, and the rate at which usage and traffic build up for new customers. Therefore, Telenet's market projections, unlike many market projections for new services, are based upon actual experience.

Both RCA and ITT, respectively, point to the "15-fold increase in Telenet traffic by 1979" (RCA comments, P.6, footnote 1) "a sudden and incredible 110-fold increase in net income in its [Telenet's] third year" (ITT Petition, p.5) in an attempt to cast doubt upon Telenet's projections. It is surprising that these carriers resort to the use of such patently worthless arguments. Obviously, any service which starts from a base of zero will experience traffic growth of manifold proportions -- in fact, Telenet's traffic volume during the latter half of its first year of domestic service was more than nine times the volume during the first half of the year. Similarly, ITT's comment regarding Telenet's projected increase in income in its third year is an even more extreme example of "playing with numbers." Telenet projected break-even for the proposed service is projected to occur during its second year; net income thus goes from a loss of $132,000 in the first year, to a gain of $2,000 in the second year and of $285,000 in the third year. This progression is, in fact, quite reasonable and normal growth--ITT has merely divided the net income in the third year by that in the second year (when near break-even, the net income is close to zero) and created the appearance of unrealistic growth.

ITT then argues that "there is no basis for concluding that experience in the domestic market, where Telenet provides both ends of the service, has any correlation to the realities of the international market, where Telenet has to provide one end of the service." (Petition, p.5, footnote 7) Although Telenet does not agree with this proposition, it should be noted that Telenet provides packet-switched service between the United States and Canada in conjunction with the Trans-Canada Telephone system (TCTS) wherein TCTS furnishes the Canadian portion of the facilities and services under its tariff, while Telenet furnishes the U.S. portion of the facilities and services under Telenet's FCC tariff. Thus, Telenet does, in fact, have experience and data both for services both ends of which are furnished by Telenet, as well as services in which one end is furnished by a correspondent carrier.

ITT states that Telenet's financial projections appear to be based upon incremental costing, that Telenet does not set forth a rate of return for the proposed overseas service, and that Telenet does not "even present figures sufficient to calculate the same." (Petition, p.5) Then ITT goes on to say that Telenet could not possibly earn a reasonable rate of return in its first two years of service. (Ibid.)

Contrary to ITT's assertion, Telenet's costing is fully allocated. Telenet's selling, engineering, and administrative costs are laregly due to labor expenditures and are allocated to the proposed overseas service on the basis of direct costs. These fully allocated expenses appear primarily under "wages and wage-related expenses" and in "other expenses" in the financial data Telenet has submitted to the Commission.[10/]

As is evident from ITT's self-contradictory comments, it is meaningless to indicate a rate of return for a service in its initial years where start-up costs are such that net income is negative. And losses during the first several years of a new service are to be expected. As the Commission has noted, "It is not unusual, of course, for new carriers or carriers entering new fields to sustain losses initially. Moreover, one of the objectives in authorizing competition is to achieve lower rates for the public." [11/]

It should also be noted that the Commission in its recent Report and Order in Docket 20097 concluded that it would allow "[resale] carriers in the first instance to determine the ratemaking approach best suited to their operations." [12/]

[10/] Application, P. 41.

[11/] RCA Global Communications, Inc. FCC 75-1100, released October 15, 1975, at p. 2.

[12/] Regulatory Policies Concerning Resale and Shared Use, FCC 76-641, released July 16, 1976, at p. 75.

IV. THE ALLEGED "POLICY" ISSUES ARE SPURIOUS

A. The "Gateway" Issue Has No Legal or Practical Significance To The Instant Application.

At paragraph 5 of its Petition, ITT argues:

> "In frustration of the proceedings in Docket 19660, Telenet seeks herein to operate an international service from Boston, which is not an authorized gateway. Since this is clearly impermissible, and the Boston 'gateway' is a material part of Telenet's proposal, 3/ its application should be denied on this ground alone.
>
> ---
>
> "3/ See application, pp. 8-10."

ITT's argument is both legally inaccurate and irrelevant. By its very terms. Section 222(a)(5) limits the applicability of the "gateway" concept to telegraph service. In Docket No 19660, the Commission has characterized existing gateway restrictions as "outdated" (See Final Policy Statement, 58 FCC2d 250, at 25 [1976]), and in dealing with the issue of whether Western Union is eligible to offer Mailgram service to Hawaii (an international point), the Commission has construed Section 222 of the Act narrowly, stating:

> "Had Congress intended to divide the telegraph industry into domestic and international spheres and to preclude a carrier from operating in both spheres, it would have done so by a provision more tailored to achieve that goal than the divestment clause ... Congress in enacting Section 222 was facing a specific situation and dealing with particular entities...Congress did not attempt thereby to anticipate changing circumstances and the advent of new communications services; and it did not attempt to preclude the provision of such services by any carrier."
> Western Union, Memorandum Opinion and Order adopted June 11, 1975 (FCC 75-673), Appendix; Para. 17. (Appeal pending sub nom. ITT v. FCC, CA2, Case No. 75-4118).

Telenet finds it difficult to perceive how its application "frustrates" a policy which is so clearly inapplicable to the proposed service. Telenet does not offer a "telegraph" service. Moreover, the purpose of "gateways" is to provide a demarcation between the domestic telegraph services of Western Union, and the international telegraph services of the IRCs, in order to protect the revenues of Western Union from diversion. In Telenet's case there exists no potential for such diversion, since Western Union does not provide a domestic packet switched service -- and if such a service were to be instituted by Western Union, it would exist in a competitive marketplace and would not be entitled to the protection afforded by Section 222.

Telenet could as easily have chosen to terminate one of its international circuits in New York -- a recognized international gateway -- as in Boston, with no effect upon the users of the service, and at only slight additional expense. That it chose not to do so manifests only its understanding that "gateway" principles are inapplicable to the proposed service, and a desire to avoid needless expenditures on terrestrial facilities into a major and already overloaded metropolitan exchange. The practical insignificance of such a change upon the proposed service demonstrates the absurdity of ITT's contention.

B. There is No Legal or Policy Requirement for Telenet To Offer the Proposed Service Through a Separate Corporate Entity

ITT urges that Telenet's application should be denied because it comtemplates the provision of both domestic and international services through a single corporate entity;

operation on such a basis, ITT suggests, would lead to an impermissible possibility of cross-subsidization between the two services.

In support of this position, ITT mischaracterizes Telenet's comments concerning the Section 214 application of ITT Domestic Transmission Systems, Inc. (ITTDTS), in which Telenet asked that ITTDTS be required to furnish a full explanation of its operating and marketing relationships with other subsidiaries of ITT Corporation, including ITT (Worldcom) and United States Transmission Systems, Inc. Although Telenet expressly declined to oppose the ITTDTS application, it noted that for want of the necessary information-- e.g., the identities of the officers and directors of the applicant and the positions they hold or have held with other carriers, including other ITT subsidiaries -- the qualifications of ITTDTS for common carrier certification cannot be determined. Nowhere did Telenet request, as suggested by ITT, that the ITTDTS application be denied on its merits, due to cross-subsidization or for any other reason.

In a similar vein, RCA alleges that Telenet would obtain "an undeserved competitive advantage" if it were permitted to offer both domestic and overseas service through a single corporate entity, and proposes that Telenet be authorized to furnish international service -- if at all -- "only through a separate corporate enterprise which would deal with its domestic counterpart only at arm's length." In support of this proposal, RCA offers only "consistency" as a rationale, claiming that it would be consistent with the Commission's treatment of certain other carriers and consistent with Telenet's recommendations concerning AT&T's proposed Dataphone Switched Digital Service (DSDS).

Both ITT and RCA fail to recognize that Telenet is a small, independent carrier having no entrenched position in any communications market, offering no monopoly services, and having no monopoly revenues from which to cross-subsidize anything. Telenet's domestic service is offered in a highly competitive marketplace in which open entry and market-based pricing are facts of life; and given the Commission's recent Report and Order in Docket 20097, dealing with resale and shared use, similar market conditions appear likely to become much more commonplace in the international arena as well. In such circumstances, any attempt by Telenet to raise its rates in one market in order to subsidize its service in the other would be a practical impossibility. The company simply does not have--and has no expectation of obtaining-- the protected market position or dominance which could make such conduct feasible. Thus, it borders on the comical for established, highly profitable carriers such as ITT and RCA to seriously express concern about being damaged by any potential cross-subsidization activities of a new entrant in Telenet's position.

RCA's suggestion that "separate entity" treatment of Telenet's proposed international service is required, in order to be "consistent" with Telenet's suggested conditions concerning AT&T's proposed Dataphone Switched Digital Service (DSDS), is equally absurd. Totally unlike Telenet's position as a fledgling carrier operating only in competitive markets, with no protected monopoly revenues from which to cross-subsidize anything, in 1975 AT&T had monopoly revenues of $9.2

billion from interstate MTS and WATS service, and $6.9 billion from intrastate monopoly services. [13] And, unlike Telenet, AT&T's rates for its competitive services have been repeatedly found by the Commission to be unjustified and cross-subsidized from monopoly services.

If "consistency" of treatment as between AT&T and Telenet is to be a policy objective, it should be in regard to AT&T's offering of international services: Not only has AT&T's offering of overseas voice service always been integrated with its domestic operations, but also the Commission has recently concluded that the company should be authorized to offer international dataphone service -- in competition with the IRCs -- on a similar integrated basis; See Overseas Dataphone, Report and Order released January 19, 1976 (FCC 76-10).

C. Entry By Telenet Into The International Data Communications Market Is Feasible And Will Have Beneficial Effects

RCA argues that new competitive entry by Telenet is neither reasonably feasible nor likely to have any beneficial effects. (Comments, pp.7-10) In addition, RCA notes that four international carriers are currently providing data communications services to Europe and that beyond a given point "additional competition among common carriers no longer benefits, but instead, becomes a detriment to the public." (*Id.*, at 7-8) In other words, four carriers are fine, but five are too many.

First, we address the feasibility of new competition. RCA has suggested that additional competition is not feasible because the international data communications market may not be large enough (Id., at 6-7) and new entry might therefore have an adverse impact upon the established record carriers, which "in a period of protracted world-wide inflation and constantly rising operating costs ... have not only failed to receive any rate increases ... but in fact have lowered their charges to the public for many services." (Id., at 8) While Telenet is in agreement with the suggestion that the use of overseas data communications services has not been large (relative to the use of data communications services domestically), this fact does not argue against new entry by Telenet, but rather argues for such entry. As Telenet explained at length in its application, and as shown in the letters submitted to the Commission by present and potential users of overseas data communications services, the currently available services are poorly suited to the requirements of computer users, and a significant latent demand for overseas data communications exists. This was the conclusion reached by the MIT Center for Policy Alternatives, in a recent study conducted for the Department of Commerce and the Office of Telecommunications Policy: 14/

---

[13] FCC Statement to Congress, May 25, 1976, Mimeo No. 65570, at p.13.

> "Substantial growth in international data communications is unlikely to come merely from expansion of present kinds of traffic. Substantial growth, if it comes, will result from the development of such new services as electronic publishing, teleconferencing, electronic mail, and computer-aided instruction."

14/ "Implications of Low-Cost International Non-Voice Communications," Itihel de Sola Pool et al, Center for Policy Alternatives, M.I.T., Cambridge, Mass., 1975; Vol. 1, p. 58.

RCA's suggestion that, before authorizing Telenet's proposed new service, the Commission should undertake a market study of the overseas data communications area, has been answered by the Commission's authorization of WUI's International Digital Data Service. There the Commission concluded that the better vehicle for determining the market demand for the proposed new service was the marketplace itself, stating:

> "ITT Worldcom informs the Commission of its intention to request the institution of a broad inquiry into the matter of digital data transmission. Moreover, ITT Worldcom points out that alternatives to IDDS, such as packet switching, will provide customers with a lower incidence of error than IDDS without utilization of duplicate facilities between operating centers. Such advantages and others of packet switching, ITT Worldcom claims, would be demonstrated in the suggested inquiry, however no inquiry or request for an inquiry concerning digital data transmission is now before the Commission and we see no reason to delay action on the subject application in view of ITT Worldcom's intention to seek such an inquiry. To the contrary, we believe there are advantages in authorizing this proposed experimental service that will be of benefit to the Commission, as well as to the public, in obtaining experience and information with regard to the type of digital data service proposed by WUI. In referring to the need for an inquiry, it appears that ITT Worldcom is of the opinion that the Commission should first explore all possible alternative ways of providing a digital data service and should then determine the best method to serve the public and authorized only that specific method. We disagree. We believe the public interest would better be served by authorizing, at least on an experimental basis, those new services that can be found to offer potential benefits and which are not inconsistent with Commission policy and rules." (56 FCC2d at 941-2)

Similarly, in the case of overseas packet switching, where current users of Telenet's domestic packet network service have already expressed their need for overseas extension of the service, market studies such as proposed by RCA would serve no purpose but to delay the proposed service and to deprive the public of its benefits.

With respect to possible adverse impacts of the proposed service upon the IRCs, it should be recognized that the underlying costs of overseas data transmission have declined dramatically, due to the advent of synchronous satellites and high-capacity undersea cables, and that the IRCs have failed to pass these reductions on to the public. As a result of this, the IRCs are earning returns of up to 17 percent [15] and are to be audited by the Commission to determine the reasonableness of their rates and charges.[16] In fact, WUI-- the smallest of the "big three" IRCs -- has recently raised its stockholders' dividend to a level 60 percent over that paid in 1975, citing "record revenues and earnings." (See Exhibit 1 hereto). Thus, it is quite apparent that the IRCs are financially healthy and will not be jeopardized due to competition from Telenet, whose projected 1979 revenues from the proposed service represent only 1.1 percent of the 1974 revenues of the four IRCs. [17]

---

[15] International Record Carriers' Scope of Operations, 58 FCC2d 250, at 265 (1976).

[16] Preliminary Audit and Study of Operations of International Carriers, Memorandum Opinion and Order released May 7, 1976 (FCC 76-396).

[17] Telenet's projected 1979 revenues from the proposed service are $3.2 million (Application, p.41); the IRCs' 1974 revenues were $287 million (58 FCC 2d at 263-5).

In considering any impact which Telenet's proposed service might have upon the IRCs, it is important to note, as well, that the service is fundamentally unlike any service offered by the IRCs, and that it will stimulate many new applications of transatlantic data communications. None of the petitioning IRCs has even attempted to quantify or otherwise identify any revenue diversion which might result from the offering of Telenet's service, for a fairly obvious reason: As pointed out at length in Telenet's application, the proposed service is aimed at an interactive data communications market for which existing modes of international communications are prohibitively expensive.

Thus, competitive entry by Telenet into the field of international data communications will have no material impact upon the IRCs (even granting that this should be a determining criterion, which we do not), and is quite feasible.

In apparent recognition of its inability to demonstrate competitive injury, RCA argues that the Commission must find that the new "competition" flowing from Telenet's entry to the international field would have some beneficial effect. Such a finding can be made with ease, for the prospective users of the service have pointed to many benfits to be realized from institution of the proposed service, as detailed below. Thus, there is no necessity for the Commission to rely on its recently promulgated policy, set forth in its July 1, 1976 Report and Order re: Resale and Shared Use of Common Carrier Services and Facilities, that prospective "resale" carriers need make no showing in their applications to the Commission as to either "special need" or "economic impact." See Report and Order, Paragraphs 105-108.

The principal benefits of the proposed service may be best stated in the words of Telenet's prospective customers, whose letters are attached hereto as Exhibits 2-12.

1. Making It Feasible for Small and Medium-Size Users to Take Advantage of Overseas Data Communications:

> Systems Development Corporation: It has heretofore been economically unfeasible to install an expensive overseas circuit with associated modems, multiplexors, etc., for the international access of our computer by a widely scattered (but large) group of prospective users. When the cost to communicate is 2 to 3 times the cost to compute, users simply are not interested.
>
> The capital required to offer even a small number of overseas ports is too great for all but the very largest corporations to risk - for example, one must order lines and equipment costing nearly $14,000 monthly just to put a 'toe' in the waters of the European user community.

* * *

> Scientific Time Sharing Corporation: In 1974 we established a subsidiary in the United Kingdom, with the intention of expanding our business into Europe. Under that plan, we would have leased a voice-grade transatlantic circuit between London and Washington, D.C., and installed multiplexing equipment at both ends. This extension of our network would have allowed U.K. customers to use our computer facility in Bethesda, Maryland in the same way as users in the U.S. At that time, the cost of the leased circuit was approximately $10,000 per month, exclusive of the cost of terminal equipment such as high-speed modem and multiplexors, and business lines and datasets at the U.K. end.
>
> In late 1974, we decided to close our newly-opened London office and cancel our orders for the transatlantic circuit before we had begun to do business there. A major

factor in that decision was the substantial operating expense of the communication facility. That expense far exceeded all other projected expenses for the U.K. operation. Had the economics of providing reliable overseas communication been less onerous, our company very likely would have taken a different decision at that time.

2. Making it Possible for Computer Service Companies to Offer Access to Their Unique Data Bases and Applications Programs Overseas:

Scientific Time Sharing Corporation: Several of our valued customers are international in scope, particularly in Western Europe. To date our company has been unable to respond to requests to provide services to overseas affiliates of our U.S. clients. In this way, we have been unable to compete effectively with some of the largest [computer service] companies in our business, although we are able to compete within the continental United States.

We feel that extension of TELENET's Packet Switched Data Communication Service to the U.K., and eventually to other countries, would allow Scientific Time Sharing to take advantage of many of the business opportunities we are currently forced to pass up. In particular, we could seriously consider reactivitation of our U.K. subsidiary in the foreseeable future.

* * *

Systems Development Corporation: This type of offering will allow access to our computer by users as diversified as governments, universities, shipping industries and researchers at prices which they can afford. We hope to be able to expand our services to users around the world, but we must have your support of imaginative companies such as Telenet...in order to make our goals happen.

* * *

First Data Corporation: We currently have United States-based customers which have businesses which would like to use our system from Europe. Presently, however, the data communications is both costly and inconvenient. Consequently, one such customer who could receive timely reports on a packet switched network settles for the much-diminished utility of mailed reports.

Interactive Science Corporation: Interactive Sciences Corporation is a computing firm offering interactive timesharing services largely throughout the Northeastern United States from a main office in Braintree, Massachusetts. We have found the Telenet Communications Network to be an efficient and low-cost vehicle for expanding our domestic markets. In the matter of extending our services to overseas customers, such a vehicle would prove to be invaluable.

3. Making it Possible for a Corporation to Provide Access to its Central Computer Facilities from its Overseas Branch Locations:

Bechtel International Corporation: The Bechtel International Corporation presently subscribes to Telenet's domestic services. Bechtel also has significant business interests overseas and throughout the world, including the United Kingdom and Europe. On the basis of our domestic experience with Telenet, we believe that the international packet switching network connection proposed by Telenet could be of substantial benefit to Bechtel. It is our opinion that the interconnection of the U.S. Telenet network with the European packet switched networks would provide a practical vehicle for Bechtel terminal users in Europe to communicate with Bechtel computers in the U.S. We feel the conventional communications options now available are impractical principally because of high costs.

* * *

Aeroquip Corporation (Subsidiary of Libbey-Owens-Ford Company): As a user of leased full period transatlantic communications services, we feel that the present tariff structures discourage multi-national corporations and those U.S. companies with overseas affiliations to economically exchange digital data. As you know, the cost effectiveness of satellite communications and the advanced technology associated with that form of service has not been passed through to the users of international services. By providing a shared data communications resource, Telenet could provide a more cost justifiable form of telecommunications for the low to medium traffic customers.

4. Providing an End-to-End Communications Service Which Obviates the Users' Need to Concern Himself With the Different Standards and Incompatibilities Which are Common Across International Boundaries:

> Interactive Sciences Corporation: Up to this point in time our organization has considered overseas services to be totally unfeasible. Although several foreign concerns have expressed interest, the prohibitive cost of existing overseas data communications facilities coupled with the interactive nature of our time-sharing services has deadned (sic) any progress in that area. The establishment of the proposed Telenet scheme would not only overcome the cost barrier but would help to solve a multitude of difficulties steming from worldwide technical incompatibilities. (Emphasis added)

5. Providing an End-to-End Data Communications Service Such That the User Would Not Be Required to Incur the Cost of Maintaining Equipment and Operations Perconnel at an Overseas Location, Simply to Monitor and Maintain Communications Multiplexing and/or Concentration Equipment:

> DTSS Inc.: Some DTSS customers have need to transmit information between their European locations and their U.S.-based DTSS time-sharing system. Our company worked with The Singer Company to place a terminal in the United Kingdom into operation with a time-sharing computer in Wayne, New Jersey. Singer rents a satellite channel, and much time, trouble, and expense was devoted to making a sub-channel of that transatlantic channel work properly with DTSS -- to the extent of having to send a man to London to assist. Were Telenet service available from London, it would be instantly utilized for this application.

* * *

> Scientific Time Sharing Corporation: Another favorable aspect of the cost of Telenet service is that we would not be required to have an agent in each U.K. city to assure maintenance of the equipment from that end.

6. Permitting Computer Service Companies to Extend Their Services into Different Time Zones, Thereby Enabling Them to Obtain Customers for Their Computer Equipment During Those Times of Day When the Computer Equipment Would Otherwise be Idle:

First Data Corporation: Our time-sharing computers are dedicated primarily to interactive use (rather than batch processing) and therefore depend on people and working hours. Extending business into new time zones can increase the profitability of our machinery.

7. Making Possible Projects Heretofore Impractical Due to Unsuitable Overseas Communications Facilities:

DTSS Inc.: Dartmouth College has cooperated with Hatfield Polytechnic, outside of London, in a variety of projects including the standardization of the computer language BASIC jointly by the American National Standards Institute and the European Standards Institute. This project could go forward more rapidly if data could conveniently be exchanged between Hatfield Polytechnic and Dartmouth College. A previous attempt to have Hatfield's and Dartmouth's computers interact was dropped because of the complexity and expense of a transatlantic dataphone connection.

* * *

Interuniversity Communications Council (EDUCOM): Much of the potential resource sharing that a network would permit is international in scope. Most of the services that will be offered over the network will be highly specialized--such as special computer programs for spectral analysis or access to a large-scale econometric data-base. Current experience with existing networks--primarily ARPANET serving the defense community--strongly supports the arguments for collaborative work among geographically dispersed research workers. An international network could substantially strengthen multinational educational and research projects engaged in by widespread institutions.

* * *

First Data Corporation: We see a less tangible benefit for Telenet's immediate involvement in international packet switching. The international packet switching idea has come of age and we feel that the technology and experience that Telenet can bring to bear in the early stages may be vital to the framework and maturation of the network.

D. Telenet Qualifies As A Customer For Comsat Circuits: A "Middleman" Role For One Or More IRCs Would Only Add To The Cost Of The Service And Detract From Its Quality, With Absolutely No Offsetting Benefits.

RCA contends that Telenet should obtain international services and facilities, if at all, from existing international voice-record carriers, rather than from Comsat, claiming that Telenet's proposal to lease circuits directly from Comsat is inconsistent with the Commission's *Authorized User Decision*, 4 FCC2d 421 (1966), 6 FCC 2d 593 (1967). RCA claims that Telenet could "obtain international service via the facilities of RCA Globcom ... [and that] the costs to Telenet of using an RCA Globcom interconnect would be substantially lower than those it would incur if it proceeded with a direct connection." Possibly in the same vein, WUI claims that it, "as a full service international carrier, is ready, willing, and able to provide international access to *all* U.S. subscribers." Significantly, WUI is vague as to the identity of the service to which it claims to be "ready, willing and able to provide international access," and RCA, with full knowledge of the Comsat costs detailed in Telenet's application, has failed to set forth any cost figures in support of its assertedly more economic approach.

RCA's interpretation of the Commission's *Authorized User Decision*, if adopted, would require a conclusion that only international carriers in existence at the time of the creation of Comsat are eligible to deal directly with Comsat for facilities. Such a conclusion is diametrically contradicted by Section 201(c)(2) of the Communications Satellite Act of 1962 which requires that the Commission "insure that all present and future authorized carriers shall have non-discriminatory use of, and equitable access to, the communications satellite system and satellite terminal stations under just and reasonable charges..." (Emphasis added).

The Commission's 1966 Authorized User Decision dealt with the issue of "the extent to which the Satellite Act contemplates, permits, or requires that Comsat be authorized to provide service directly to entities other than carriers." (4 FCC2d, at 422). It was, and is, unquestioned that Comsat is authorized to provide service directly to carriers. RCA argues that because Telenet leases, rather than owns, the underlying transmission facilities utilized in the provision of its packet switched data communications service, "it possesses more the attributes of a "user" than it does those of a common carrier." (Comments, p.10) The Commission has recently dealt with this very question, in Docket No. 20097, and has concluded (Resale and Sharing..., supra, paragraph 101):

> "...with the exception that some resellers may not own any transmission plant, we perceive no difference between resale and traditional communications common carriage. The fact that an offeror of an interstate wire and/or radio communications service leases some or all of its facilities - rather than owning them - ought not have regulatory significance.[84] The public neither cares nor inquires whether the offeror owns or leases the facilities.
>
> ---
>
> "[84] In fact, Western Union leases a substantial part of its communications facilities now. It has never been suggested that it is not a common carrier in its offering of service over leased facilities."

The same reasoning applies to the international record carriers, who lease their satellite facilities from Comsat, lease domestic transmission facilities to interconnect their gateway offices from AT&T and other domestic carriers, and "own" (on an IRU basis) only their underseas cable facilities.

V. CONCLUSION

The instant application presents the Commission with a further opportunity to fulfill its "statutory mandate...to regulate telecommunications such that the public receives high quality service at the lowest cost." 18/ Telenet's proposal to extend its domestic packet switching services to the United Kingdom has the support of numerous prospective users, who are currently denied economical and reliable access to international data markets, at the same time that the large international carriers are realizing rates-of-return in the high teens. While it is understandable that the IRCs would strongly resist Telenet's proposed entrance into the international communications market, such opposition need not detain the Commission, which has already recognized, and rejected, the IRCs' desire for a "protective umbrella." 19/

In any event, as has been shown above, the hostility of the IRCs is largely instinctive rather than rational: Telenet's service will primarily attract data communications users who are not currently utilizing the services of any international carriers, due to cost factors, and thus revenue diversion from the existing IRCs is expected to be minimal.

18/ Overseas Dataphone, Report and Order released January 19, 1976, (FCC 76-10); Para. 14.

19/ Ibid.

Each of the contentions of the opposing carriers has been examined in detail, and exposed as totally lacking in merit. Telenet's expressed willingness to accept a grant conditioned upon its filing with the Commission its formal agreement with the BPO prior to instituting the proposed service eliminates any legitimate concern as to the status of the current Telenet-BPO understanding, and the IRCs have presented no other cause to defer or condition any action upon the application.

WHEREFORE, it is urged that the Commission expeditiously grant the instant application.

Respectfully submitted,

TELENET COMMUNICATIONS CORPORATION

By________________________________
Philip M. Walker
Vice President & General Counsel
1050 - 17th Street, N.W.
Washington, D.C. 20036

By________________________________
Donald E. Ward
Law Office of Donald E. Ward
1050 - 17th Street, N.W.
Washington, D.C. 20036

August 3, 1976

Its Attorneys

EXHIBIT 1

News Release

WUI, INC.
Western Union International, Inc.

WUI, INC. One WUI Plaza, New York, N.Y. 10004, U.S.A.

FOR IMMEDIATE RELEASE

EDITORIAL CONTACT:
A. SIRNA
(212) 697-2420

WUI INCREASES DIVIDEND

New York, New York July 21, 1976

WUI, Inc. today raised its regular quarterly dividend to 20¢ per share, payable September 13, 1976 to stockholders of record on August 13, 1976. WUI paid 15¢ per share in both the first and second quarters of the year.

Dividends in 1975 totaled 50¢ per share. In May, the Company reported record revenues and earnings for the first quarter 1976 with revenues for the quarter just under $23 million and net income $2 million or 72¢ per share.

WUI, Inc. is the parent company of Western Union International, Inc., a major international record carrier providing telex, cablegram and leased channel telecommunications to over 150 countries worldwide. Domestic communications subsidiaries include Airsignal International, Inc., providing radio paging and mobile telephone service, and WUI/TAS, Inc. offering a nationwide network of telephone answering services.

EXHIBIT 2

Scientific
Time Sharing
Corporation

APL PLUS®

7316 Wisconsin Avenue, Bethesda, Maryland 20014 • (301) 657-8220

June 3, 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communication Service From the Continental United States to the United Kingdom and Points Beyond

File No. ITC-2634

Dear Mr. Hinchman:

Scientific Time Sharing Corporation strongly supports the subject application and respectfully recommends the Commission's approval thereof.

Scientific has been offering computer timesharing and network information services within the United States for almost seven years. Until the public availability of Value Added Networks (VANs) such as TELENET and TYMNET in the past two years, we were forced to construct and operate a private network to serve customers in different parts of the country.

We were an early and enthusiastic user of both VANs and plan to increase our usage of such facilities where it is more cost-effective than maintaining our own network. In a recent internal study we concluded that 50% of our total traffic would be best handled through TELENET, based on quality and cost considerations. Changes in tariffs by the common carriers, primarily AT&T, MCI and DATRAN, as well as TELENET could change that mix.

The remainder of the traffic is handled on our own network. That network is based on leased analog and digital circuits from AT&T, MCI, and DATRAN for inter-node communication. Commercially available multiplexors, including minicomputer-based statistical multiplexors and local business lines and datasets in STSC-maintained sites around the U.S. complete the network. A full-time staff based in Bethesda maintains, extends, and operates the STSC network.

Our present customer base is primarily within the continental United States, with some usage in Canada. In 1974 we established a subsidiary in the United Kingdom, with the intention of expanding our business into Europe. Under that plan, we would have leased a voice-grade transatlantic circuit between London and Washington, D.C., and installed multiplexing equipment at both ends. This extension of our network would have allowed U.K. customers to use our computer facility in Bethesda, Maryland in the same way as users in the U.S. At that time, the cost of the leased circuit was approximately $10,000 per month, exclusive of the cost of terminal equipment such as high-speed modem and multiplexors, and business lines and datasets at the U.K. end.

In late 1974, we decided to close our newly-opened London office and cancel our orders for the transatlantic circuit before we had begun to do business there. A major factor in that decision was the substantial operating expense of the communication facility. That expense far exceeded all other projected expenses for the U.K. operation. Had the economics of providing reliable overseas communication been less onerous, our company very likely would have taken a different decision at that time.

Several of our valued customers are international in scope, particularly in Western Europe. To date our company has been unable to respond to requests to provide services to overseas affiliates of our U.S. clients. In this way, we have been unable to compete effectively with some of the largest companies in our business, although we are able to compete within the continental United States.

We feel that extension of TELENET's Packet Switched Data Communication Service to the U.K., and eventually to other countries, would allow Scientific Time Sharing to take advantage of many of the business opportunities we are currently forced to pass up. In particular, we could seriously consider reactivation of our U.K. subsidiary in the foreseeable future.

The primary advantages of such a service to us are quality and cost, though the two are closely related. Without a data communications service of the kind proposed by TELENET, we can provide communications overseas only by making a substantial fixed-cost commitment to a leased channel and expensive terminal equipment. Many months of successful marketing would be required to bring hourly operating costs of that arrangement within a reasonable range. By contrast, TELENET's proposal would allow us to begin service immediately in the U.K., principally for affiliates of our U.S. customers. The cost of that service would be strictly proportional to usage. Such service would therefore be self-supporting. Another favorable aspect of the cost is that we would not be required to have an agent in each U.K. city to assure maintenance of the equipment from that end.

In summary, Scientific Time Sharing Corporation would benefit from the service proposed by TELENET. Extension of the service to other European countries and Japan would further increase its attractiveness. I urge the Commission's prompt consideration and approval of this application.

Sincerely,

Philip S.

Philip S. Abrams
Vice President

PSA:ld
cc: Philip Walker
Vice President and General Counsel
Telenet Communications Corporation
1050 17th Street, N.W.
Washington, D.C. 20036

EXHIBIT 3

P

FIRST DATA 400 TOTTEN POND ROAD / WALTHAM, MASSACHUSETTS 02154 / 617-890-6701

JUN 17 1976

June 4, 1976

Mr. Walter Hinchmana
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond

File No.: ITC-2634

Dear Mr. Hinchman:

As a commercial timesharing service, First Data has a strong interest in Telenet's application to extend service to the United Kingdom and points beyond. We strongly favor approval of the application for the following reasons:

- We currently have United States-based customers which have businesses which would like to use our system from Europe. Presently, however, the data communications is both costly and inconvenient. Consequently, one such customer who could receive timely reports on a packet-switched network settles for the much-diminished utility of mailed reports.

- Our timesharing computers are dedicated primarily to interactive use (rather than batch processing) and therefore depend on people and working hours. Extending business into new time zones can increase the profitability of our machinery.

- Though we currently are not prepared to actively market our services in Europe, the decision point to do so is much closer given the existence of a Telenet-type network. The communications entry cost is prohibitive unless a packet network exists.

Lastly, we see a less tangible benefit for Telenet's immediate involvement in international packet-switching. The international packet-switching idea has come of age and we feel that the technology and experience that Telenet can bring to bear in the early stages may be vital to the framework and maturation of the network.

Sincerely,

FIRST DATA CORPORATION

Robert A. Swithers
Manager, Systems Development

cc: Stuart Mathison
Vice President
Telenet Communications Corporation

EXHIBIT 4

EDUCOM

INTERUNIVERSITY COMMUNICATIONS COUNCIL, INC.

Post Office Box 364 · Rosedale Road, Princeton New Jersey 08540 · Telephone 609-921-7575

June 8, 1976

Mr. Walter Hinchman
Chief, Common Carrier
Bureau
Federal Communications
Commission
Washington, D.C. 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond.

File No.: ITC-2634

Dear Mr. Hinchman:

The Planning Council on Computing in Education and Research is a consortium of twenty-two leading universities that are engaged in a cooperative effort to develop a computing network that permits wiedespread resource sharing. The attached brochure gives some of the details of the Council.

Much of the potential resource sharing that a network would permit is international in scope. Most of the services that will be offered over the network will be highly specialized -- such as special computer programs for spectral analysis or access to a large-scale econometric database. Current experience with existing networks -- primarily ARPANET serving the defense community -- strongly supports the arguments for collaborative work among geographically dispersed research workers. An international network could substantially strengthen multinational educational and research projects engaged in by widespread institutions.

For these reasons, the Planning Council is following with keen interest Telenet's application for a packet-switching link with Europe. The availability of reliable and low-cost communications with European institutions would, we think, be of considerable value in promoting international resource sharing of computing services.

Sincerely,

James C. Emery
Vice President

Enclosure

cc: Philip Walker
Vice President and
General Counsel
Telenet Communications
Corporation

EXHIBIT 5

BOX 799 HANOVER, N.H. 03755 603/643-4672

DTSS
INCORPORATED

10 June 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond.

File Number: ITC-2634

Dear Mr. Hinchman:

DTSS Incorporated endorses the application of Telenet to provide services to Europe.

DTSS Incorporated is a computer software company. Our business is licensing the use of time-sharing operating system software called the Dartmouth Time-Sharing System (DTSS). This DTSS software was originally developed by Dartmouth College and rights transferred to DTSS Incorporated by Dartmouth, which holds all the common stock of the company. Many of our customers are large industrial companies which buy a license to use DTSS software, buy a suitable computer with which to use the software, and then operate an intracompany time-sharing computer system. The availability of Telenet services makes it possible for such a company with many different physical locations to access a central time-sharing computer reliably and inexpensively. Because DTSS software supports the host interface protocol for Telenet, such a company can connect its DTSS time-sharing system to Telenet with a minimum of expense and communications expertise.

The availability of Telenet has thus had a favorable impact on sales of DTSS software licenses. The economic impact on a DTSS/Telenet customer is not limited simply to savings of communications costs, but to savings due to the increased functionality and efficiency of the Dartmouth Time-Sharing System operating on an in-house, centrally controlled time-sharing computing facility.

DARTMOUTH TIME-SHARING SYSTEM

Some DTSS customers have need to transmit information between their European locations and their U.S.-based DTSS time-sharing system. Our company worked with The Singer Company to place a terminal in the United Kingdom into operation with a time-sharing computer in Wayne, New Jersey. Singer rents a satellite channel, and much time, trouble, and expense was devoted to making a subchannel of that transatlantic channel work properly with DTSS -- to the extent of having to send a man to London to assist. Were Telenet service available from London, it would be instantly utilized for this application.

Dartmouth College has cooperated with Hatfield Polytechnic, outside of London, in a variety of projects including the standardization of the computer language BASIC jointly by the American National Standards Institute and the European Standards Institute. This project could go forward more rapidly if data could conveniently be exchanged between Hatfield Polytechnic and Dartmouth College. A previous attempt to have Hatfield's and Dartmouth's computers interact was dropped because of the complexity and expense of a transatlantic dataphone connection.

Telesystemes, a computer service bureau in Paris, France, has a license to use DTSS, to be used beginning late this year. Telesystemes already has communications channels between France and the United Kingdom. DTSS Incorporated will have need to access Telesystemes' DTSS time-sharing system and will probably be able to do this using the proposed Telenet service to London. (I understand that Comshare, of Ann Arbor, Michigan, was unable to give interactive assistance to its licensee in the United Kingdom because of the complexity of transatlantic dataphone calls.) Telesystemes itself is directly involved in TRANSPAC, the French packet-switched network, and looks forward to using DTSS software and the X25 interface to provide time-sharing services in France. Approval of the Telenet application to extend services to the United Kingdom will therefore find sufficient expertise already in place in Europe to make use of the facilities provided.

I would be happy to provide additional information should you request it.

Very truly yours,

RF Hargraves, Jr

Robert F. Hargraves, Jr.
President

pl

cc: Philip Walker
Vice President General Counsel
Telenet Communications Corporation
1050 17th Street North West
Washington, DC 20036

EXHIBIT 6

FAIRCHILD [illegible]

[illegible]

21 June 1976

Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: File No. I-T-C-2634

Dear Sir:

I understand that on May 4th, Telenet Communications Corporation filed a Section 214 application with the Federal Communications Commission to extend its domestic packet-switching service to the United Kingdom. Fairchild Camera and Instrument Corporation is presently a significant user of trans-Atlantic telecommunications services and we see this new service as providing an advanced and economical alternative to our present international communications network.

Fairchild's future plans include significant expansion of international data communications and packet-switching is one of the techniques we've been counting on to improve price-performance to a more justifiable level.

We will appreciate your early favorable action on this application from Telenet.

Sincerely,

Burleigh D. Cook
Director, Management
Information Systems

BDC:tg

cc: Philip M. Walker ✓
Vice President and General Counsel
Telenet Communications Corporation
1050-17th Street, N.W., Suite 850
Washington, D.C. 20036

EXHIBIT 7

Bechtel International Corporation

Engineers—Constructors

Fifty Beale Street
San Francisco, California 94105

Mail Address: P. O. Box 3965, San Francisco, CA 94119

June 23, 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond

File No.: ITC-2634

Dear Mr. Hinchman:

The Bechtel International Corporation presently subscribes to Telenet's domestic services. Bechtel also has significant business interests overseas and throughout the world, including the United Kingdom and Europe. On the basis of our domestic experience with Telenet, we believe that the international packet switching network connection proposed by Telenet could be of substantial benefit to Bechtel. It is our opinion that the interconnection of the U.S. Telenet network with the European packet switched networks would provide a practical vehicle for Bechtel terminal users in Europe to communicate with Bechtel computers in the U.S. We feel the conventional communications options now available are impractical principally because of high costs. Accordingly, we express our support for Telenet's international packet switching application.

R. A. Burke
Data Communications Manager

RAB:lp
cc: P. J. Harrington

[illegible]

JUN 28 1976

EXHIBIT 8

INTERACTIVE
SCIENCES
CORPORATION

60 BROOKS DRIVE
BRAINTREE • MASSACHUSETTS 02181
617 848-[illegible]

June 23, 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, DC 20554

Dear Mr. Hinchman:

RE: Application of Telenet Communications Corporation for Authority to Extend Packet-Switching Data Communications Service from the Continental United States to the United Kingdom and Points Beyond

File No. ITC-2634

Our organization has recently become aware of the aforementioned application by Telenet Communications Corporation which is currently before your Commission. As a user of Telenet's existing domestic service, we wish to respectfully voice our support for the proposed extended service.

Interactive Sciences Corporation is a computing firm offering interactive time-sharing services largely throughout the Northeastern United States from a main office in Braintree, Massachusetts. We have found the Telenet Communications Network to be an efficient and low-cost vehicle for expanding our domestic markets. In the matter of extending our services to overseas customers, such a vehicle would prove to be invaluable.

Up to this point in time our organization has considered overseas services to be totally unfeasible. Although several foreign concerns have expressed interest, the prohibitive cost of existing overseas data communications facilities coupled with the interactive nature of our time-sharing services has deadned any progress in that area. The establishment of the proposed Telenet scheme would not only overcome the cost barrier but would help to solve a multitude of difficulties steming from worldwide technical incompatibilities.

In our opinion, the proposed Telenet packet-switching service would not only represent a significant step forward in worldwide data communications but would also add a new dimension to international time-sharing service capabilities

Very truly yours,

INTERACTIVE SCIENCES CORPORATION

Thomas J Dunn

Thomas J. Dunn
President

TJD/kb

EXHIBIT 9

Aeroquip

AEROQUIP CORPORATION • JACKSON, MICHIGAN 49203

A subsidiary of Libbey-Owens-Ford Company

June 24, 1976

Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: File No. I-T-C-2634

Dear Sir:

I am writing to comment upon the recent application by Telenet Communications Corporation for extending its domestic packet-switching service to the United Kingdom.

As a user of leased full period transatlantic communications services, we feel that the present tariff structures discourage multi-national corporations and those U.S. companies with overseas affiliations to economically exchange digital data. As you know, the cost effectiveness of satellite communications and the advanced technology associated with that form of service has not been passed through to the users of international services. By providing a shared data communications resource, Telenet could provide a more cost justifiable form of telecommunications for the low to medium traffic customers.

The entire concept of commercial packet-switching, which eminated from the Government's own Advanced Research Projects Agency, offers an exciting alternative to the distance dependent communications facilities of the past.

I urge you to react favorably to the Telenet proposal.

Thank you.

Sincerely,

Howard Selland

Howard M. Selland
Data Processing Manager

HMS/pz

cc: Mr. Philip M. Walker
Vice President & General Counsel
Telenet Communications Corporation
1050 -17th Street, N.W., Suite 850
Washington, D.C. 20036

300 SOUTH EAST AVENUE Phone: 517 - 783 - 2585

EXHIBIT 10

System
Development
Corporation

2500 COLORADO AVENUE · SANTA MONICA, CALIFORNIA 90406
TELEPHONE (213) 393-9411

June 30, 1976
A.308

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: Application of Telenet Communications Corporation for Authority
To extend packet-Switched Data Communications Service from the
Continental United States to the United Kingdom and Points Beyond

File No.: ITC-2634

Dear Mr. Hinchman:

As a leader in the development of timesharing and unique data base services, System Development Corporation has been very interested in the evolution of data communication services and tariffs between the U.S. and other countries. Indeed, we have had to travel overseas several times to "sort out" the legal entanglements of what is and is not allowed. As you are no doubt aware, the current turmoil in communication regulations can be extremely taxing to a firm such as ours which wants to provide computer-based services very much in demand by users around the world. The purpose of this letter is to encourage your organization to work toward a settlement of these matters and, while doing so, strongly consider the plight of the small to medium size users of data communication services in this country. Approving Telenet's well-drafted application will certainly be a large step forward in modernizing and stabilizing international tariffs.

As Telenet's application aptly points out, it has heretofore been economically unfeasible to install an expensive overseas circuit with associated modems, multiplexors, etc., for the international access of our computer by a widely scattered (but large) group of prospective users. When the cost to communicate is 2 to 3 times the cost to compute, users simply are not interested.

The capital required to offer even a small number of overseas ports is too great for all but the very largest corporations to risk - for example, one must order lines and equipment costing nearly $14,000 monthly just to put a "toe" in the waters of the European user community.

Offerings by the established record carriers have been inadequate in originality and pricing. They offer only basic services and charges according to a highly skewed price schedule which would seem to reap vast profits at any level below voice bandwidths considering the price paid to Comsat. When a telex call costs as much as a telephone call per minute and the latter is capable of "carrying" 20 to 100 of the former, something is severely wrong with our current international tariffs.

Rather, data usage should be priced according to bits per unit of time as this is how the networks are utilized. We feel that the Telenet approach is fair and should be established as a precedent of costing of international communications services.

This type of offering will allow access to our computer by users as diversified as governments, universities, shipping industries and researchers at prices which they can afford. We hope to be able to expand our services to users around the world, but we must have your support of imaginative companies such as Telenet (or TYMSHARE) in order to make our goals happen.

FCC approval of subject application would be in the public interest as many firms such as System Development Corporation have been placed in the arena of excessive and unreasonable costs of international services.

Thank you for your consideration of this matter.

Very truly yours,

Marvin Franklin
Vice President

cc: Senator Alan Cranston
452 Russell
Senate Office Building
Washington, D.C. 20510

Senator John V. Tunney
6221 Dirksen
Senate Office Building
Washington, D. C. 20510

EXHIBIT 11

CTX

CAMBRIDGE TELECOMMUNICATIONS INC.

23 Brian Road Chelmsford, Mass. 01824
617-256-8290
617-275-1383

1 July 1976

Secretary
Federal Communications Commission
Washington, D.C. 20554

RE: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond

File No.: ITC-2634

Dear Secretary:

Cambridge Telecommunications has a great deal of experience providing consulting and software services in the data communications industry. We are keenly aware of the needs of data communications users. Many companies have a requirement for a United States-Overseas data communications facility. However, the high cost to install and maintain a private capability has prohibited all but the largest companies from even planning it. Therefore, to be able to buy only the service required would overcome the major impediment for many companies.

For years now, SITA, based in France has provided an international data communication facility for the airline industry. This service permits the smallest carrier to easily and relatively cheaply gain access to worldwide data communications.

Telenet has already demonstrated the ability to provide such a service in North America. CTX strongly urges an early favorable FCC action on the Telenet application.

Sincerely,

Greg B

Greg Burch
Vice President

cc: Philip M. Walker
Vice President and General Counsel
Telenet Communications Corp.
Washington, D.C. 20036

GB/las

EXHIBIT 12

July 7, 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D. C. 20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond

File No.: ITC-2634

Dear Mr. Hinchman:

The Lockheed Information Systems organization of Lockheed Missiles & Space Company, Inc. would like to take this opportunity to express its support for Telenet's recently filed application for network extension to the United Kingdom and points beyond. Lockheed Information Systems provides an online interactive bibliographic information retrieval service called DIALOG^{R}. It offers online access to a collection of over 12 million document references in all major disciplines contained in over 35 databases and requiring over 14 billion characters of direct access storage. To our knowledge, it is the most comprehensive service of its kind in the world.

In the United States, Canada and Mexico, the value added communications services of Telenet Communications Corporation and TYMSHARE, Inc. have had a very considerable impact on increasing availability, increased use and decreased user costs. In European or other foreign use of our services the cost of conventional communications alternatives dominate the total cost picture to the point of almost totally excluding use. The principal cost element of the DIALOG service is a connect-time related searching charge. The range is from $25.00 to $150.00 per connect-hour with the weighted average roughly $[illegible]0.00 per hour. All databases generated by federal agencies are currently offered at $25.00 and $35.00 per hour. Foreign direct distance dialed phone calls cost approximately $3.00 per minute or $130.00 per hour and Telex rates from Europe are only slightly less. In an interactive application that generates an average traffic of approximately 23,000 characters of input and output per connect hour, 50 baud Telex also represents a serious operational compromise for the user.

The Telenet proposed tariff charge of $[illegible].00 per kilopacket and no connect-hour charge per se would allow us to offer European users service at a total cost that is only a few percent higher than that for domestic users. Such a rate structure will be the leading factor that ultimately determines the continued economic viability of our service and that of other vendors as well. The only element in Telenet's application that we cannot give our full support is the minimum packet charge of $1.00 per virtual connection. The problem we have with this particular charge is that all too often incorrect entry of host system passwords or host system temporary inability to handle a user will result in a number of very brief (under one minute) connections. This generates a significant non-billable expense for the host system. The proposed $3.00 per hour minimum packet charge, if applied to the total monthly volume, represents a much more equitable tariff in our opinion.

In summary, while we wish to give our enthusiastic support to the present application, we would also support any similarly priced data communications application for service outside of North America. It is only through such communications offerings which take advantage of the technology of the mid-1970's that international exchange of computer-based information and services will ever take place on a significant scale. We are also most appreciative of innovative and competitive climate that the Federal Communications Commission has helped to create in the data communications field and see this application as another significant step in the same direction.

Sincerely yours,

Mark S. Radwin
Telecommunications and
International Operations
Lockheed Information Systems
Program Office

MSR:bc

cc: Mr. Philip Walker
Vice President & General Counsel
Telenet Communications Corporation
1050 17th Street, N. W.
Washington, D. C. 20036

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of GRAPHNET SYSTEMS, INC. Application for Authority to Permit Use of Facsimile Services to Communicate With Terminal Devices Located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany	File Nos. I-P-C-11, I-P-C-11A

To: The Commission

OPPOSITION ON BEHALF OF GRAPHNET SYSTEMS, INC.

On July 12, 1976, Petitions to Deny the captioned application were filed by ITT World Communications, Inc. (hereinafter "ITT") and Western Union International, Inc. (hereinafter "WUI"), and "Comments" requesting denial were filed by TRT Telecommunications Corporation (hereinafter "TRT"). A "Petition to Dismiss or Deny" was filed July 2, 1976, by RCA Global Communications, Inc. (hereinafter "RCA"), and supplemented thereafter by further pleading filed July 12, 1976. Graphnet Systems, Inc. (hereinafter "Graphnet"), by its attorneys, submits herewith its opposition to those pleadings.

Preliminary Statement

1. The captioned application was filed by Graphnet on February 18, 1976. In the materials filed, Graphnet proposed to establish new and innovative communication services between the United States and a number of Western European countries. As stated at page 3 of the application --

> . . . Graphnet here requests such supplemental authority as the Commission may deem necessary to permit United States subscribers to utilize Graphnet's system capabilities to communicate with facsimile terminals at addressee locations in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany. The service proposed here will permit United States subscribers to input information from virtually any terminal source (e.g., CRT, digital device, computer, etc.), and have that information output on a receiving facsimile terminal in the European countries specified above.

In light of the Commission's action in its Overseas Dataphone proceeding, 57 F.C.C.2d 705 (1976), Graphnet initially specified the use of AT&T transmission facilities. However, because of IRC efforts to delay implementation of that decision, and pursuant to discussions with the Commission's Staff, Graphnet amended its application on April 1, 1976, to specify the alternative use of Comsat facilities. Additional information in that regard was furnished by further amendment filed May 26, 1976.

By Public Notice dated June 10, 1976 (Report No. I-P-C-241), the Commission accepted Graphnet's application for filing.1/

2. In their pleadings, the U.S. international record carriers protest, not just a grant of Graphnet's proposal, but any substantive consideration of the proposal at all. Indeed, in RCA's view, "too much time has [already] been expended, not only by us but by Commission staff, in the pursuit by Graphnet of its ill-considered dreams and schemes." (RCA Supplement, p. 4, n.) While presenting a melange of peripheral assertions, the IRCs' fundamental contention is that, since Graphnet has not yet concluded necessary agreements with foreign correspondent carriers, the application is "incomplete" or "premature," and should be "rejected." For the reasons set forth below, none of the petitioners' contentions is meritorious.

1/ In its Supplement, RCA states that it was unaware of Graphnet's April 1st and May 26th amendments until July 6th, and that those amendments have mooted the principal objections in RCA's July 2nd petition. (E.g., RCA Supplement, p. 2.) In the process, however, RCA also suggests Graphnet to have breached some procedural obligation to serve RCA, "as a party-in-interest," copies of those amendments. Id. at p. 1, n. Whatever RCA's embarrassment, it should be made clear that neither statute nor rule nor policy required service of Graphnet's amendments on RCA. At the time of amendment, the application was not in a contested status. And there was no reason why Graphnet should have assumed RCA would take exception to the sound proposal Graphnet's application represented. That RCA has chosen to object at all is unfortunate. That it should do so without first ascertaining precisely what it was protesting is even more unfortunate. And that it should seek to blame Graphnet for its failure is regrettably unbecoming.

I. The Absence of Final Agreements Between Graphnet and Foreign Correspondent Carriers Stands As No Obstacle to Favorable Commission Action Here

3. The central argument of all of the protesting IRCs is that the absence of a final agreement between Graphnet and foreign correspondent carriers forecloses any favorable Commission consideration of the Graphnet proposal. While phrased in a variety of ways, the IRCs' basic syllogism is the same: Effectuation of the Graphnet proposal requires a working arrangement with foreign telecommunications entities; but Graphnet has not concluded agreements embodying such working arrangements; therefore the application should be rejected.[2] For the reasons set forth below, the IRCs' position is without merit, either in logic or in law.

4. In evaluating the IRCs' arguments, it should be recognized at the outset what is not at issue. None of the protestants asserts that, if granted the authority requested, Graphnet would be unable to negotiate an appropriate agreement with the pertinent foreign correspondents. Indeed, in the absence of

---

[2] In a footnote sentence, ITT asserts the existence of a "threshold question" whether Graphnet "is properly an 'authorized user' for obtaining circuit capacity directly from Comsat, a 'carrier's carrier'." (ITT Petition, p. 3, n. 3.) To the extent ITT has not favored the Commission with an explanation of its position, meaningful response is not possible. Suffice it to say, as a certificated common carrier, Graphnet is as entitled to utilize Comsat's facilities as any other carrier. Moreover, Graphnet is an "authorized user" if the Commission says it is. And a grant of the captioned application would be just such a declaration.

efforts by the IRCs to effect that result (see pp. 9-10, below), such a position would belie the realities of accelerating international commerce generally, and international communications in particular.[3/]

5. Neither do the protestants contend that the Commission is legally disabled, in the absence of such an agreement, from deciding whether the availability of the proposed services would be in the public interest. And in fact, neither the Communications Act nor the Commission's regulations require a formalized agreement with a foreign correspondent carrier as the _quid pro quo_ for a grant of the type of application here involved.

6. Rather, the IRCs' contention is that, _as a matter of ordering its application processing procedures_, the Commission _should not_ consider such proposals in the absence of a formal agreement. The most expansive litany of reasons why not are summarized by WUI as follows:

> . . . (a) the public need and economic feasibility determinations which the Commission must make on any application for new service to an international point . . . may no longer be valid by the time an applicant finally enters into an operating agreement, if it ever does so, with the relevant foreign correspondent carrier; and (b) abandonment of this sound precedent would doubtless lead to a veritable flood of 'academic' or 'speculative' applications, the processing of which would squander scarce Commission resources, exacerbate the substantial backlog of pending 'real' applications, and create chaos in the international communications field for users and carriers alike.

3/ See, _e.g._, _Data Communications_, July/August, 1976, pp. 13-14, a copy of which is attached as Appendix A.

(WUI Petition, pp. 3-4.)[4] In Graphnet's view, the IRCs' parochial position is one wholly without substance, and is compelled by neither policy nor a reasoned consideration of the public interest.[5]

7. First, while the IRCs suggest otherwise, there are no absolute policy requirements which foreclose favorable Commission action on Graphnet's application in the absence of formal, final agreements with foreign correspondents. Even in more traditional contexts, the Commission has recognized the need to avoid any such inflexible approach.[6] Indeed, on at least one occasion, the Commission affirmatively directed a carrier not to conclude agreements with its foreign correspondents before the Commission had a chance to pass on the desirability of a project requiring

---

[4] As to earlier assertions by the IRCs that resale of international services would create "chaos" in the international communications field, the Commission in Docket No. 20097 (¶ 74) found that such generalized assertions "are vague and do not establish a reasonable probability of harm."

[5] It should be pointed out that, in requesting summary "rejection" or "dismissal" of the Graphnet proposal, the IRCs appear actually to be seeking reconsideration of the Commission's having accepted the application for filing. The discussion at page 3 of WUI's petition, for example, seems to confirm that intention. (See also ITT's petition, pp. 3-4: "The Commission has consistently required that applicants . . . show that an appropriate agreement exists . . . before the application can be processed.") So viewed, of course, the petitioners must satisfy the requirements of Sections 1.106 or 1.115 of the Commission's Rules. And on their face, the pleadings filed do not meet the requirements or burdens of those Rules.

[6] See, e.g., American Tel. & Tel. Co., 57 F.C.C.2d 1103 (1976); American Tel. & Tel. Co., ___ F.C.C.2d ___ (FCC 76-706, released August 3, 1976).

Section 214 authorization. (See letter dated October 4, 1967, from Chairman Rosel Hyde to Harold Botkin of AT&T concerning TAT-5.)[7] Moreover, in considering resale services such as those here involved, the Commission recently appeared specifically to eschew the notion that its authorizing such services in the international field should be subjugated to the prior agreement of foreign correspondents.[8]

8. In this regard, it should also be recognized that the reasons for the Commission's past habit of requiring prior agreements in considering IRC applications are not directly applicable here. For the most part, the Commission's approach in that regard has been one based on its rate-base regulation of IRC charges, and the need to evaluate those long-term cost factors which result from negotiated IRC equity interests in the transmission

---

[7] To one extent or another, various aspects of Section 214 applications are often unresolved and therefore "contingent" -- for instance, when a contract for the construction of a satellite, cable or earth station is let only after the application, which has included an estimated price, has been granted.

[8] See, e.g., the Commission's Docket No. 20097 decision at ¶74:

> We have considered the views that the IRCs should not be subject to our policy regarding resale and sharing of their services, or, in the alternative, that resale and sharing should be required only if the foreign entity agrees to such practices. Neither position is, in our view, consistent with the statutory obligation of the IRCs as common carriers subject to our jurisdiction.

facilities to be utilized by them in new proposed services. Thus, ITT refers to two such circumstances where the Commission indicated the need for agreements with foreign correspondents prior to action on IRC Section 214 applications. (ITT Petition, p. 4.)[9] Both instances, however -- and the procedural requirement for which they are said to stand -- are readily distinguishable. There, established international carriers, having other existing contractual relations with foreign correspondent entities, were involved. And in each case, the carrier involved was seeking to acquire indefeasible rights of use in international circuits -- cost factors which would be included in the carrier's rate base. Here, of course, Graphnet does not enjoy an existing carrier-to-carrier relationship with foreign correspondents. In addition, Graphnet's proposal does not entail the acquisition of ownership interests in the circuits to be employed. Thus, any agreements between Graphnet and foreign correspondents will not subsume such rate-base elements as the Commission may have deemed essential to determining the appropriateness of IRC charges in the past.[10]

---

[9] It should be noted that in one of the actions relied on by ITT, American Tel. & Tel. Co., 35 F.C.C.2d 801 (1972), the Commission's reference to the absence of an agreement between TRT and its anticipated correspondent carrier was dictum, and was not the factor on which the Commission's determination turned.

[10] In this regard, it should be noted that the Commission has indicated its intention not to exercise traditional rate-base regulation over entities authorized pursuant to its Specialized Carrier and Resale policies in any event.

9. Second, the realities here involved indicate that, in the absence of a prior Commission authorization, Graphnet's concluding of agreements with foreign correspondents is not a practical possibility. There are close, cordial and long-standing relationships between the IRCs and the foreign telecommunications entities with which Graphnet will be required to deal. And by virtue of those relationships, the IRCs could effectively assure that the agreements said here to be a threshold requirement will never be obtained. Michael Kinsley has recently cited examples of the IRCs' ability to enlist such support in the past:

> The record carriers immediately went to work on their European counterparts, who informed the Commission -- in a statement relayed by Western Union International -- that they had not been consulted about the compromise and were not happy with it. . . . .
>
> Ma Bell did not rely on reasoned argument alone. She also enlisted the pressure groups that had been cooperative in the past. Letters began arriving at the FCC from the European telephone systems, all endorsing 50-50 and TAT-6. 11/

10. Moreover, even in the absence of any affirmative efforts on the part of the IRCs, it would be naive to assume that foreign correspondents would enter agreements with U.S. entities not yet authorized by the Commission, and risk impairing relations with their existing U.S. partners by seeming to encourage

---

11/ Kinsley, Outer Space & Inner Sanctums, John Wiley & Sons, Inc. (New York, 1976), at 93, 99.

new competition with the IRCs. Indeed, a most striking confirmation of that fact was pointed up by ITT's own filing here. At footnote 5 of its petition, ITT indicated that Italcable had "advised Graphnet that it was 'not interested in your (Graphnet's) proposal'." At Graphnet's request, ITT informed Graphnet of the communication to which it had referred. The communication involved was a Telex memorandum from Italcable to each of the U.S. IRCs which set forth, "for your information," the entire content of both an introductory letter by Graphnet to Italcable, and Italcable's response.[12/] To the extent that Graphnet -- or any other non-IRC[13/] -- cannot even communicate with foreign correspondent entities without their feeling obligated to immediately report such facts to the U.S. IRCs, how can it realistically be expected that such entities will conclude agreements with Graphnet in the absence of a prior Commission authorization?

11. Against this background, the practical implications of the IRCs' position should be plainly stated, and clearly understood. For it is those realities on which the Commission must base its judgment. And in reality, an acceptance of the IRCs' position will be a relinquishment to them of the power to decide what U.S. international communications services will be provided, and by whom.

12/ A typewritten rendering of the communication, received by ITT in February, 1976, and related to Graphnet counsel by telephone on July 22, 1976, is attached as Appendix B.

13/ Compare the recent Telenet/BPO circumstance.

The fact is that Commission approval will be required before final agreements between Graphnet and foreign correspondents will be possible. Until Commission authorization is granted, the IRCs have the ability -- either directly, or indirectly, by virtue of their status as existing IRCs -- to prevent the successful negotiation of such agreements. If the existence of such agreements is made the threshold requirement for Commission consideration of applications such as Graphnet's, the IRCs will hold the key to what the Commission may consider.

12. Such an approach, of course, is wholly antithetic to the Commission's non-delegable responsibility to consider and resolve public interest issues. The question here is whether the availability of the Graphnet services proposed is in the public interest. And the absence of formal agreements with foreign correspondents does not impair the Commission's ability to make such a judgment. To be sure, it is theoretically possible that foreign administrations would be able to frustrate implementation of a Commission decision in the affirmative by refusing to negotiate agreements. However, such a remote possibility runs, not to the Commission's initial public interest judgment whether the services proposed should be made available to U.S. users, but to what actions may thereafter be required by the Commission to insure that future bilateral arrangements properly reflect the Commission's determination.

13. In short, the only proper approach in this case is precisely contrary to that urged by the IRCs. In light of the

practical circumstances involved, the Commission should first determine whether the services proposed would be of public benefit. If it resolves that question affirmatively, it should approve the Graphnet application on condition that, prior to implementing any services pursuant to that authorization, the necessary operating agreements between Graphnet and any foreign correspondent be submitted for Commission review and approval. In this fashion, the Commission will have armed Graphnet with the credential essential to negotiating final agreements with foreign correspondents. At the same time, the Commission will have retained its ability to determine the appropriateness of specific arrangements between U.S. and foreign carriers. But it will have done so in a fashion which recognizes the realities of existing international business relationships and marketplace operations.

II. The IRCs' Miscellaneous Peripheral Contentions Are Without Merit or Consequence

14. In their pleadings, certain of the IRCs advance a variety of subsidiary points. In the main, these contentions, narrowly procedural in nature, are but repetitions of arguments earlier presented in connection with Graphnet's Hawaii application. (File No. W-P-C-950.) In part, the arguments -- particularly the vituperative rhetoric of WUI -- are but efforts to blur the real issues for disposition here. None of the matters raised, however, warrants the relief which the IRCs request.

A. Graphnet Has Satisfied the Applicable Standards of Section 63.01 Of the Commission's Rules

15. Certain of the IRCs assert that Graphnet has failed to satisfy the requirements of Section 63.01 of the Rules. Paralleling their earlier contentions concerning Graphnet's Hawaii application, for example, WUI and ITT summarily contend that Graphnet has failed adequately to support its estimates of traffic, revenues and expenses. (WUI Petition, pp. 9-10; ITT Petition, pp. 6-7.) To the extent WUI and ITT have offered merely their conclusory opinions, detailed response is neither possible nor required. The application materials include as detailed a forecast as is reasonably possible. Attachment 2 sets forth Graphnet's estimates, and Attachment 3 (pp. 4-7) describes the type of market projections considered in arriving at those estimates.

16. Significantly, WUI and ITT do not dispute the reasonableness of Graphnet's figures, seeming to rely instead on the need for some additional, unspecified data. As the Commission has acknowledged, however, forecasts of the market for unique services not currently available cannot be made with precision. With that reality in mind, and since it has determined to let the marketplace for competitive communication services determine rate levels, the Commission has not required traditional forms of market studies for such new offerings. Thus, the burden of compliance with the requirements of Section 63.01 by carriers

such as Graphnet has not been viewed to be coextensive with the types of showings required for more traditional types of common carrier services. What has been offered here by Graphnet is reasonable, and adequately satisfies the requirements of Section 63.01 of the Commission's Rules.

17. In its recent Docket No. 20097 decision (¶ 108), the Commission determined "not to require . . . a showing of a special need for service not now available." Nonetheless, WUI dusts off its rote assertion that Graphnet has failed to demonstrate a "need" for its proposed service. (WUI Petition, pp. 7-9.) Again WUI concedes its position to be but a restatement of its contentions with respect to Graphnet's Hawaii proposal. And again, that position was disposed of in Graphnet's opposition pleading there[14] -- arguments hereby incorporated by reference. Moreover, Attachment 3 to the captioned application presented in detail the public need for the services proposed herein, and set forth the public benefits to be derived from their authorization. Significantly, WUI disputes none of the showings there made, relying instead on abbreviated, gratuitous quips that the information

---

[14] See, e.g., Graphnet's April 22, 1976 Opposition, at pp. 14-20.

provided was insufficiently supported. Graphnet stands on the showing made.[15/]

B. Arguments Concerning Graphnet's Domestic Operations and Authorization Are Both Inaccurate and Irrelevant

18. At pages 4-6 of its petition, WUI appears to argue that, because Graphnet has failed to implement its initial domestic proposal, the captioned application should be rejected. In support of its view that there is "substantial doubt as to the nature of the system presently utilized by Graphnet," WUI endeavors to suggest that Graphnet's current system does not operate in the ways originally proposed. As WUI acknowledges (WUI

[15/] In its July 2nd petition (p. 7), RCA asserts that if the captioned application is granted, Graphnet "would obtain an unfair competitive advantage over those licensed voice/record carriers, including RCA Globcom, which are restricted in their authorizations from providing domestic record service and from originating or terminating traffic beyond a limited, few Gateway cities." Since RCA has not explained the basis for that contention, meaningful response is not possible. Suffice it to say, however, in the context of the Commission's *Overseas Dataphone* and *Resale* rulings, no unfair advantage would be gained by a grant of Graphnet's proposal here. Indeed, the recent proposal by ITT Worldcom to extend its international services domestically through ITT Domestic Transmission Systems, Inc. (File No. W-P-C-672, filed December 5, 1975) would appear to be subject to the claim here advanced by RCA -- a claim RCA has not advanced against its sister IRC. Moreover, as pointed out in response to the IRCs' similar claim concerning Graphnet's Hawaii application (see Graphnet's Opposition, filed April 26, 1976, pp. 16-20), Graphnet's unique system and services provide a variety of capabilities distinct from, and superior to, *any* of the currently available IRC services. ITT's assertion that Graphnet will not provide any service substantially different from the IRCs' Datel offering (ITT Petition, p. 6), is both unsupported and wholly inaccurate.

Petition, p. 4), however, its contentions in this regard have already been presented in opposing Graphnet's application for authority to serve Hawaii. (W-P-C-821.)[16] Those contentions were fully disposed of in Graphnet's response to WUI at that time,[17] and Graphnet's arguments -- incorporated herein by reference -- will not be reiterated in this pleading. Suffice it to say at this juncture, WUI's contentions are wholly without merit, and their repetition here reflects merely an effort to obscure the basic public interest determination to be made in this case.

19. In an effort to create further confusion, WUI (Petition, p. 5) and RCA (Petition, pp. 4-6) also contend that Graphnet's domestic service offerings exceed its present certificate authority. The wholly spurious nature of those assertions, however, should be recognized. First, the contentions advanced are simply wrong. RCA and WUI rely on a pending dispute between Graphnet and The Western Union Telegraph Company,[18] in which Western Union has advanced precisely the position RCA and WUI now posit. To that extent, Graphnet has already responded to the Western Union

---

[16] See WUI Petition to Deny, March 17, 1976, pp. 12-14.

[17] Opposition by Graphnet Systems, Inc., April 26, 1976, pp. 20-31.

[18] See Graphnet Transmittal No. 18, filed March 22, 1976; Western Union "Petition to Reject Proposed Tariff Provisions Exceeding Scope of Section 214 Certificate," filed April 14, 1976. See also W-P-C-950, filed June 2, 1976; Western Union "Petition to Deny," filed July 19, 1976.

arguments here repeated.[19] Graphnet's responsive arguments are incorporated by reference, and are dispositive of the RCA and WUI pleading iterations herein.

20. Second, arguments concerning the scope of Graphnet's current domestic authorization are not relevant to the issues here in any event. Such matters are being separately considered, and will be resolved in the context of the current Graphnet/Western Union dispute. Insofar as this application is concerned, the proposal submitted describes precisely the type of service contemplated. (See Application, Attachment 1.) And neither RCA nor WUI claim an inability to understand what the application describes. The tangential issues sought to be interjected by WUI and RCA stand as no obstacle to determining whether the captioned proposal is in the public interest.[20]

---

[19] With respect to its Transmittal No. 18, see Graphnet's "Opposition to Petition to Reject Tariff," filed June 2, 1976. Graphnet's response to Western Union's petition to deny W-P-C-950 will be filed August 12, 1976.

[20] In passing, ITT notes the contention in its protest of Graphnet's Hawaii proposal that the Commission's Specialized Carrier policies were not applicable to "the international arena." (ITT Petition, pp. 7-8.) Any grant of Graphnet's application here, ITT asserts, is permissible only "after a complete review . . . of those policies in the context of the actual conditions pertaining in the international field." (*Id.* at 8.) For the reasons already set forth at pages 7-9 of Graphnet's April 26, 1976, response to the IRCs' objections to Graphnet's Hawaii application, ITT is wrong.

Conclusion

21. In its recent Docket No. 20097 decision (¶ 108), the Commission described the standard to be applied in evaluating such resale applications as that here involved:

> [W]e will require that applicants seeking certification as common carriers providing resale services establish that they are technically, legally and financially qualified to provide the service which they propose.

None of the protesting IRCs has disputed Graphnet's technical, legal or financial qualifications to provide the service for which it here requests authorization. And the instant application, together with Graphnet's basic application for U.S. domestic resale service (File No. P-C 8586), granted by the Commission in 1974, 44 F.C.C.2d 800, demonstrate beyond question that Graphnet is amply qualified in these respects to receive the authorization it seeks.

22. Instead, the fundamental objection is a narrow one -- that the absence of completed agreements between Graphnet and foreign correspondent entities renders inappropriate any further Commission consideration of Graphnet's application. For the reasons set forth above, Graphnet submits there is no compelling support, in precedent or policy, for the IRCs' position. Equally important, however, are the practical consequences of the IRCs' approach. Aware of the weakness of their position on the public interest merits of Graphnet's application, the IRCs here attempt

to forestall an evaluation of the substantive proposal by positing a threshold procedural quid pro quo -- agreements with foreign correspondent carriers. Conveniently, that prerequisite is one over which the IRCs hold substantial sway.

23. The decision to be made here, however, is whether the proposed services are in the public interest. That judgment requires no prior concurrence by foreign carriers, and the Commission's ability to make such determination should not be made subject to IRC allowance. Since the services are both needed and beneficial, and given the realities of existing IRC/foreign correspondent relationships, the Commission should promptly grant the application, subject to a requirement that any implementing agreements between Graphnet and foreign correspondents be submitted for Commission approval prior to the initiating of services. Such an approach would settle Graphnet's authority to offer the services proposed, and would afford Graphnet the needed credential for negotiating appropriate formal agreements with foreign communications entities. But at the same time, it would preserve the Commission's ability to review and approve the specifics of such agreements, and to take any additional steps which may appear indicated at the time.

24. Such an accommodation of the practical factors here involved would clearly serve the public interest in expanded, innovative communications services. Indeed, in Graphnet's view, it represents the only realistic way in which the Commission's

resale policies and benefits can be realized. To adopt the position here urged by the IRCs would effectively preclude the possibility that any new service not provided by existing IRCs will eventuate. The IRCs' underlying assumption -- that the Commission's policy determinations are but empty gestures -- must be rejected. A prompt grant of Graphnet's application herein is earnestly urged.

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

By______________________________
Joseph M. Kittner

____
Edward P. Taptich

____
Peter M. Andersen

McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

Its Attorneys

August 10, 1976

APPENDIX A

DATA COMMUNICATIONS - July/August 1976 - pp. 13-14.

U.S.-UK packet hookup may be next

Telenet Communications Corp., the only packet-switching carrier operating in this country so far, now wants to broaden its services by carrying packet traffic between the United States and the United Kingdom, using two satellite links. To do this, Telenet filed an application on May 4 with the Federal Communications Commission for certification as an international common carrier. Any Telenet customer anywhere in the continental U.S. would have access to this international service.

A Telenet official says that approval is not anticipated for several months because objections are expected from one or more of the established international record carriers that now transmit data between the U.S. and the UK. Even with this delay, the British won't be ready for public-network packet switching.

The application states that the new international linkup is especially suited for interactive-timesharing and transaction-oriented services. Independent market surveys by Telenet and the British Post Office—which runs telecommunications services in the UK—have disclosed that both U.S. and UK owners of host computers want to have access to each others' data bases and programs. According to Telenet, neither of these kinds of applications can be handled economically by leased or dial-up services now offered by the established international record carriers. For example, international Dataphone would cost $180 an hour (daytime rates) at a maximum data rate of 4,800 bits per second.

ON TO LONDON. In contrast, Telenet will charge $10 per kilopacket, equal to about 1 million bits of traffic. Initially, Telenet's traffic will go over terrestrial links from two "gateway" cities (Boston and Washington) to Comsat satellite earth stations in Maine and West Virginia. Transmission at first will be at 9,600 b/s and later, when traffic load picks up, at 50,000 b/s. Eventually, the link may be a 50,000-b/s Digisat channel when it goes into service over the Atlantic Ocean.

In England, traffic will be directed from an earth station to London. However, once in London, traffic will not be routed over a British packet-switching network because so far none exists.

Although the British are building a network, called EPSS for experimental packet-switching system, under a joint agreement of the British Post Office and some 40 UK organizations, EPSS is not ready to go into service as an international public-access packet network nor is its interface arrangement consistent with the new international X.25 packet interface recently adopted by Telenet and its networks in other countries.

Instead, the BPO proposes to install a special protocol-interface unit in London, which, on one side, will interface with Telenet's protocol and, on the other side, will interface with the variety of protocols of the host computers owned by United Kingdom customers.

INTERIM. Michael L. Ford, external-telecommunications executive of the BPO, told DATA COMMUNICATIONS that although letters have been exchanged between the BPO and Telenet favoring the startup of international packet-switching service, "We [the BPO] do not have an operating agreement with Telenet."

But in a letter to Lawrence G. Roberts, president of Telenet, Ford said "In the UK, we expect to be in a position within three years to provide a complete international packet-switching gateway exchange capable of interconnection at internationally agreed standards to any suitably equipped country. In the interim we will be prepared to make expedient arrangements for the provision of service to the U.S."

Apparently, the BPO will eventually interconnect with any U.S. packet-switching network that wants access to the UK's network. Preliminary discussions to this point have taken place between Ford and a representative of Tymshare Inc.—which itself recently filed for authorization as a domestic (U.S.) packet-switching carrier. □

APPENDIX B

FROM ITALCABLE, Rome

TO Podmolik, ITT
Codacovi, RCA
Broomall, WUI
Lubetzki, TRT

FOR YOUR INFORMATION. HERE COPY OF MESSAGE RECEIVED FROM GRAPHNET AND ITALCABLE REPLY. QUOTE.

> ATTN: MR. E. BRIZZI
>
> I AM WRITING TO INTRODUCE YOU TO GRAPHNET SYSTEMS, INC. IN JANUARY, 1974, GRAPHNET RECEIVED FEDERAL COMMUNICATIONS COMMISSION AUTHORITY AS A COMMON CARRIER TO OFFER PACKET SWITCHED FACSIMILE AND DATA COMMUNICATIONS SERVICES ON A NATIONWIDE BASIS IN THE UNITED STATES. [. . .] INITIAL SERVICE OFFERINGS ARE CONCENTRATED IN THE FACSIMILE AREA. ONE OF THE MANY UNIQUE FEATURES THE SYSTEM PRESENTLY OFFERS IS THE ABILITY TO SEND FROM ANY DIGITAL SERVICE TO ANY FACSIMILE DEVICE: IN EFFECT PROVIDING A BRIDGE BETWEEN THESE TWO TERMINAL POPULATIONS.
>
> GRAPHNET HAS DONE CONSIDERABLE MARKET INVESTIGATION RELATIVE TO DEMAND FOR ITS TYPE OF SERVICES BOTH IN EUROPE AND THE UNITED STATES. WE FEEL THERE IS A SIGNIFICANT EXISTING UNMET NEED FOR BOTH TELEX/TWX [TO] FAX AND FAX-TO-FAX COMPUTER SWITCHED SERVICES AND [WE] PRESENTLY HAVE THE ONLY SWITCH IN COMMERCIAL SERVICE TODAY.
>
> THE GROWTH OF FACSIMILE TERMINAL INSTALLATIONS [,] BOTH IN EUROPE AND UNITED STATES [, OF] OVER 120,000 [,] OR IN EXCESS OF [THE NUMBER OF] TWX-TELEX [TERMINALS,] WILL OBVIOUSLY FURTHER ENHANCE THE DEMAND FOR GRAPHNET'S UNIQUE SERVICES AND CREATE A SUBSTANTIAL INTERNATIONAL MARKETPLACE.
>
> GRAPHNET PRESENTLY HAS A LARGE CUSTOMER BASE WHICH INCLUDES THE LEADING CORPORATIONS FROM THE VARIOUS COMMERCIAL AND INDUSTRIAL BUSINESS CLASSIFICATIONS. IN ADDITION, WE ALSO HAVE MANY [. . .] CUSTOMERS [WHICH] HAVE EXPRESSED AN INTEREST IN USING GRAPHNET'S SERVICES FOR INTERNATIONAL TRANSMISSION. GRAPHNET IS INTERESTED IN EXPLORING THE POSSIBILITY OF INTERCONNECTING NETWORKS IN ORDER TO MAKE A JOINT SERVICE OFFERING BETWEEN EUROPE AND THE UNITED STATES WITH ITALCABLE BEING THE HUB FOR THE EUROPEAN AREA.
>
> IF YOU SHARE THIS INTEREST, I SUGGEST A MEETING AT YOUR EARLIEST POSSIBLE CONVENIENCE FOR FURTHER DISCUSSIONS.

> IN THE MEANTIME, IF YOU HAVE ANY QUESTIONS OR REQUIRE FURTHER INFORMATION, PLEASE CONTACT ME AT GRAPHNET SYSTEMS, INC., 99 WEST SHEFFIELD AVENUE, ENGLEWOOD, NEW JERSEY.
>
> ARTHUR PARSONS

END QUOTE.

THANK YOU FOR YOUR MESSAGE CONCERNING GRAPHNET SYSTEMS AND FOR [THE] VALUABLE INFORMATION YOU PROVIDED TO US. HOWEVER, WE SHOULD POINT OUT THAT ON OUR SIDE, DUE TO MANY REASONS, AT PRESENT WE ARE NOT INTERESTED IN YOUR PROPOSAL.

WITH BEST PERSONAL REGARDS,

E. BRIZZI

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION)
)
Application for Authority to) File No. I-T-C-2634
Extend Packet-Switched Data)
Communications Service from the)
Continental United States to the)
United Kingdom and Points Beyond)

REPLY

ITT World Communications Inc. (ITT Worldcom) hereby replies to the Opposition filed by Telenet Communications Corporation (Telenet) to ITT Worldcom's Petition to Deny the above-captioned application. Stripped of its self-serving verbiage, Telenet's application is, a plea for special treatment exempting it from the Commission's normal requirements of an operating agreement, gateway authorization and adequate cost justification.

Telenet Has Failed To Demonstrate Any Excuse For The Absence of An Operating Agreement

1. The instant Opposition, consisting of 65 pages (including attachments), is an implicit, but unmistakeable, admission by Telenet that the issues raised in the various Petitions to Deny its application are most substantial. This is evidenced not only by the bulk of Telenet's pleading, and the recognition therein of a large number of questions that would have to be resolved in its favor prior to any grant, but also by its resort to such extralegal digressions as a pejorative attack upon the good faith of those who disagree with it, the attachment of obviously solicited customer letters

and a self-serving paeans of praise for its officers. However, nothing in Telenet's Opposition can obscure the fact that it is asking the Commission to pass upon all the legitimately presented issues under circumstances precluding satisfaction of the Commission's obligation to assess the public interest, convenience and necessity in the context of today's realities.[1/]

2. For, it remains dispositive that Telenet has no agreement -- formal, informal, preliminary or otherwise -- to operate in conjunction with the British Post Office (BPO), and there is no "evidence" that Telenet can ever attain such an agreement. Since this is manifest from the text of the BPO's May 25, 1976 letter, including its express denial of any "offer by the British Post Office to establish a direct interconnection" with Telenet or even that it was in a position to "make any proposals in relation to how the international facilities should be provided," no purpose would now be served by a point-by-point rebuttal of Telenet's latest attempt to reinterpret that letter. However, we would make a few final observations about the flimsy excuses Telenet has offered in its quest for special treatment.

3. Although every applicant for certification under Section 214 of the Communications Act of 1934 as amended has the burden of showing its

---

[1/] As the Court of Appeals explained in Hawaiian Telephone Co. v. F. C. C. 498 F. 2d 771, 776 (D. C. Cir, 1974):

> "When the FCC considers an application for certification of a new line, it must start from the situation as it then exists and must apply the statutory standard to determine whether indeed the public convenience and necessity requires more or better service" (emphasis supplied).

proposed facilities "can and will be used"[2/] -- which necessarily presupposes the concurrence of the appropriate overseas administration -- Telenet has presented absolutely no new *facts*, *from the BPO*, since its May 25 letter. Obviously, if the BPO *were* desirous of interconnecting with Telenet, it would not have made its May 25th letter the "last word" on the subject. Indeed, it takes little imagination to conclude that, after that letter, Telenet sought in vain to obtain a renewed expression of interest from the BPO.

4. Contrary to Telenet's claim, the BPO's posture cannot be explained by the alleged reluctance of foreign administrations to make their views known to the Commission. As the Commission itself stated in the *TAT-VI* decision:

> "The Commission . . . will, to the greatest extent possible consistent with United States national law and policies, attempt to meet the desires of overseas telecommunications entities, as reflected in the applications before us, *meetings with overseas entities, and other communications and exchanges with such entities*."[3/]

5. Moreover, as previously demonstrated by copious supporting authority which Telenet never even tried to distinquish, overseas administrations, including the BPO, routinely enter into operating agreements with U.S. carriers prior to (and contingent upon) 214 certification by the

---

[2/] Letter from the Chief, Common Carrier Bureau, to Communications Satellite Corporation, FCC File No. 18-CSS-P-76, May 14, 1976, p. 2.

[3/] *American Telephone & Telegraph Co.* 35 F.C.C. 2d 801, 818 (1972) (emphasis supplied). Even a casual deserver of this industry would know that such exchanges occur on a regular basis. See. e.g., Telecommunications Reports, July 19, 1976, p. 24; March 29, 1976, [illegible]

Commission.[4] Nor has Telenet ever tried to explain the contradiction, shown in several prior pleadings, between its position herein and its recognition elsewhere that 214 certification is contingent upon a showing "that the applicant has negotiated the necessary operating agreements with appropriate overseas entities."[5] Thus, Telenet's continued references to "the understandable reluctance of the BPO"[6] demonstrates nothing more than Telenet's capacity for redundancy.

6. Finally, while Telenet denies it is seeking an FCC "hunting license" to subsequently obtain an operating agreement with the BPO, it also invites the Commission to grant its application subject to the condition that it thereafter conclude such an agreement. Any shred of consistency as between those two positions, would be, in Mr. Justice Cardozo's phrase, "a filament too fine to be disentangled" by rational minds.[7]

---

[4] See e.g. TRT Telecommunications Corp., 46 F.C.C. 2d 1042, 1045 (1974) (UK); TRT Telecommunications Corp., Memorandum Opinion and Order, released February 4, 1976, Mimeo No. 60550, ______, F.C.C. 2d ______ (UK); French Cable Telegraph Co., Order and Authorization, Released May 27, 1976, Mimeo No. 65537, ______ F.C.C. 2d ______ (UK); Tropical Radio Telegraph Co., 35 F.C.C. 2d 950, 953 (1972) (Italy); ITT World Communications Inc., 19 F.C.C. 2d 536, 537-38 (1969) (Bahamas). All of the foregoing were cited in ITT Worldcom's Reply of July 2, 1976 to Telenet's Opposition to ITT Worldcom's Petition for Rejection.

[5] Telenet Reply Comments in Docket No. 20097, February 24, 1975, p. 14.

[6] Opposition, p. 2.

[7] Shepard v. United States, 290 U.S. 96, 106 (1933).

Telenet Is Wrongfully Seeking to Circumvent the Gateway Issue

7. Telenet has failed to refute ITT Worldcom's showing that it seeks to offer international service through an illegal Boston gateway. In its Final (5 Gateway) Policy Statement in Docket 19660, the Commission defined a gateway as "a city which constitutes a point of entry into or exit from the continental United States where the IRC's may pick up or deliver telegraph messages which either originate or terminate at a point outside of the continental United States".[8/] Telenet does not deny that, under its proposal, Boston will function as such a point of entry or exit. Instead, it frivolously contends that packet-switching is not "telegraph" service within the meaning of Section 222 of the Act.

8. Under Section 222 (a) (6), "international telegraph operations," for which gateway authorization is necessary, encompasses any "record communications by wire or radio." Thus, "although the Act speaks only in terms of telegraph messages, the Commission has traditionally applied the gateway concept to other services of the IRC's as well,"[9/] including telex and leased channel services.[10/] Clearly, packet-switched service is just as much a "record communication" as leased channel and telex.

9. Thus, like leased channel and telex service, packet-switching involves the transmission of data. Moreover, as Telenet states, "packet-switching and conventional message switching are both forms of store-and-forward computer

---

[8/] 58 F.C.C. 2d 250, 254 (1976).

[9/] International Record Carriers' Communications, 54 F.C.C. 2d 909, 920 (1975).

[10/] See Final Policy Statement, supra, 58 F.C.C. 2d at 257.

based switching . . . . and the "essential difference" between them is that packet-switching "'will guarantee to pass a packet through the network rapidly enough for the purposes of interactive working and resource sharing between computers.'"[11]

10. This "essential difference" -- that the data goes through the transmission media in packets -- is patently without legal significance, and the Hawaii Mailgram[12] proceeding, relied upon by Telenet, in no way establishes the contrary. For, the Commission's rationale in permitting Western Union to offer Mailgram as an international service to Hawaii, as quoted below, is hardly one that Telenet could adopt:

> ". . . the principle difference between Mailgrams and PMS is that Mailgrams are ultimately delivered by the Postal Service which, accordingly, bears total responsibility for their delivery . . . The service is thus subject to the practices of the Postal Service while message telegrams are not. In the case of PMS, however, the customer is seeking rapid, reliable delivery of his message for which a written record is available . . .
>
> In the case of Mailgrams, the Postal Service [unlike Western Union] makes no guarantee as to the date or time of delivery, or even that delivery will occur, and does not provide refunds for non-delivery.[13]

Unlike Mailgram, but like other record services, packet switching is transmitted over, and delivered by, conventional telecommunications facilities and entities;

---

[11] Opposition, pp. 20-21.

[12] The Western Union Telegraph Co., 55 F.C.C. 2d 668 (1975).

[13] 55 F.C.C. 2d at 674.

it is not "subject to the practices" of any noncommunications body. In addition, since Telenet claims that reliability is a hallmark of it system, it cannot maintain that packet switching is analogous to Mailgram in this respect.[14/]

11. Contrary to Telenet's claim, it should be a fortiori bound by the same gateway restrictions pertaining to all existing IRC's. Subject to the Further Notice of Inquiry in Docket 19660,[15/] the IRC's are precluded from directly handling international traffic at hinterland locations and, instead, can interconnect with domestic carriers only at five coastal gateway cities. By contrast, Telenet, which proposes to compete with the IRC's,[16/] would, under its instant application, unfairly attain a more extensive direct access simply by interconnecting with itself.

12. In this connection, Telenet's conclusory claim, that the Boston gateway is but a minor part of its proposed international system, is not only contradicted by its Application (p. 9), but is also irrelevant. Since one independently material function of a gateway city is to permit "the acceptance or delivery of

---

[14/] In any event, the Hawaii Mailgram proceeding did not involve a gateway question under Section 222(a), but rather, an interpretation of the divestment clause of Section 222(c). The Commission did rule, however, in connection with Section 222(a), that "Mailgram is a record, as opposed to voice, service, and hence falls within the . . . definition of 'telegraph operations.'" 55 F.C.C. 2d at 671. Since packet-switching is similarly not a "voice" service, Section 222(a) is equally applicable to it.

[15/] 54 F.C.C. 2d 532 (1975).

[16/] For example, some of Telenet's prospective international customers describe themselves as present or former users of IRC services (See Opposition, Ex. 2, 5, 6, 9, and 12).

overseas traffic originating or terminating in the hinterland through interconnection with a domestic carrier in that city,"[17] every hinterland point in Telenet's system where it proposes to interconnect with itself must be considered a hinterland gateway.[18] Thus, the fundamental question becomes one of regulatory consistency -- whether the Commission will adopt a rule of special favoritism allowing Telenet's academic application to go forward while other carriers are subject to the strictures of the Commissions existing gateway policy.

13. Prior Commission precedent is overwhelmingly against such preferential treatment for Telenet. For example, *United States Transmission Systems, Inc.*,[19] the Commission, in prohibiting USTS, an ITT domestic specialized comon carrier subsidiary, from interconnecting with ITT Worldcom for the purpose of carrying international traffic, reasoned as follows:

> ". . . such interconnection would in fact give ITT additional gateways. In the proceeding in Docket No. 19660, 38 F.C.C. 2d 546 (1972), the Commission is considering the question of authorizing additional gateway cities. We believe that it would be inappropriate here, in light of that proceeding, to indirectly authorize additional gateways. Accordingly, pending the resolution of that proceeding, we will prohibit USTS from interconnecting with ITT for the provision of international service."

Obviously, if this reasoning applies to interconnection between two administratively separate ITT subsidiaries, it is all the more applicable to Telenet's proposal to interconnect with itself.

---

[17] *TRT Telecommunications Corp.*, 52 F.C.C. 2d 1053, 1060 (1975).

[18] This apparently includes over 20 cities. See Application, pp. 7, 11, 16-17, 21, 4

[19] 48 F.C.C. 2d 859, 862 (1974), aff'd ______ F.2d _____ (D.C. Cir. 1976).

14. Similarly, in the Free Direct Access[20] proceeding, the Commission stated, in denying the IRC's authority to absorb the charges associated with their customers' use of various hinterland domestic networks:

> "In large measure, it will render the statutory differentiation between gateway and hinterland meaningless . . . Indeed, under free direct access, the IRC's will achieve even greater coverage than they could by establishing new offices outside present gateways . . . To accomplish its intent, Congress gave the Commission . . . the duty to approve gateways and the power to regulate the IRC's gateway operations. Implicit in this power is a requirement for the Commission to determine the effect on the public interest of any proposals which would fundamentally alter the nature of current gateway concepts and a concomitant duty to assess the public need for additional gateways. We are, therefore, unable to accept the IRC's suggestion that section 222 should be given a narrow construction that applies only to physical intrusions into the hinterland."

This rationale applies with even greater force to Telenet since, by virtue of its domestic authorization, it already has a "physical" presence in many hinterland localities. Telenet should not be permitted to bootstrap that authorization into an operation that would "render the statutory differentiation between gateway and hinterland meaningless." No other carrier has been given such special treatment.[21]

---

[20] International Record Carriers' Communications, 40 F.C.C. 2d 1082, 1086-87

[21] See TRT Telecommunications Corp., 52 F.C.C. 2d 1053, 1060-61 (1975), and RCA Global Communications, Inc., 56 F.C.C. 2d 660, 672 (1975) for additional examples of the Commission's refusal to permit expansion of gateway authority outside the purview of Docket 19660.

Telenet's Cost Justification is Meaningless

15. As shown in ITT Worldcom's Petition to Deny (p. 4), the Commission cannot even begin to evaluate the cost justification in Telenet's application, which was premised upon the use of two diverse satellite circuits, since Telenet now seeks authorization for only one circuit. While Telenet takes semantical umbrage at our claim it has thus "in effect, amended" its application, and prefers instead to characterize its present position as seeking "deferral of authority" for half its service (Opposition, p. 18), the fact remains that the Commission cannot relate the cost justification data in Telenet's two satellite applications to the wholly different present grant for which it is now applying.

16. As ITT Worldcom further demonstrated (Petition to Deny, pp. 4-5), while Telenet's application (and associated economic data) assumes the use of 50 kbs circuits, the BPO's May 25 letter stated it "envisaged the establishment" of 9.6 channels. Telenet's feeble response to this point is that: "although the BPO is unwilling at this time to commit itself to such upgrading of circuit capacity [to 50 kbs], there is no reason to believe it will not gladly do so when the projected traffic volume materializes" (Opposition, p. 19). Consistent with its "hunting license" approach, the foregoing is not claimed to be based upon any representation by the BPO, which is not even "glad" enough to provide Telenet with any manifestation of an agreement, let alone the terms thereof.

In short, Telenet is asking the Commission to perform the impossible task of assessing a present request for a one satellite, 9.6 kbs authorization on the basis of two satellite, 50 kbs cost data.

17. In addition to the above, Telenet has failed to refute ITT Worldcom's contention that it has resorted to incremental pricing. Indeed, Telenet itself describes its cost data as representing "the anticipated added revenues and costs associated with the proposed extension of Telenet's network service to the United Kingdom."[22/]

18. Nor does Telenet adequately explain the violent fluctuation in its traffic and revenue projections, showing, respectively, a negative rate of return in Year 1, a 65 fold increase in net income in Year 2 and a further, 140 fold increase in Year 3. Telenet's purported "explanation," that it derived its figures from its domestic experience where it provides both ends of the service, ignores the absence of any correlation thereof to the realities of the international market-place where Telenet hopes to provide one end of the service. Moreover, it is impossible to understand how Telenet's 9 month domestic experience could afford a basis for a three year international projection.[23/] Telenet's claimed additional reliance upon its alleged "international" experience in providing service to Canada[24/] is plain balderdash, since that service was not even in operation when Telenet submitted its instant May 4, 1976 application.[25/]

[22/] Application, pp. 40-42 (emphasis supplied).

[23/] To the extent that such short-lived, and apparently fluctuating, domestic experience leads to Telenet's wildly rising international projections, it belies Telenet's claim that it "has based its market projections on highly reliable source data" (Opposition, p. 24).

[24/] Under the Communications Act, Canada is considered a domestic point. The Western Union Telegraph Co., 55 F.C.C. 2d 668, 672 n. 11 (1975).

[25/] Telenet instituted its Canada service by tariff revisions filed July 22, 1976 and effective the next day.

19. Telenet also unsuccessfully tries to weasel out of its contradictory position on cross-subsidization. Suffice it to note that while Telenet now claims "it expressly declined to oppose the ITTDTS application" on this or any other ground,[26] the Telenet pleading cited in our Petition to Deny just as expressly asserted that ITTDTS' application was "fatally defective."[27]

20. While no useful purpose would be served by refuting every falsehood in Telenet's Opposition, this pleading cannot be closed without remarking upon its demonstrably untrue claim that the IRC's have failed to reduce rates and that, "as a result", they are subject to audit in Docket 20778 (Opposition, p.-35). It is common knowledge that, in recent years, there have been many substantial international rate reductions despite periods of otherwise unprecedented inflation in other sectors of the economy.[28] And the preliminary audit undertaken in Docket 20778 applies to all current international voice and record carriers; surely, Telenet would not be exempt from that audit if its academic application were granted.

---

[26] Opposition, p. 30.

[27] Petition to Deny, p. 6, footnote 8.

[28] For example, only this year, the rate for Telex calls between the United States and the United Kingdom was reduced by 27 1/2 %.

Conclusion

The net effect of Telenet's Opposition is that it is some how above, or at least, exempt from, the Commission policies and legal requirements that apply to existing international carriers. It has, however, failed to furnish statutory Authority, Commission precedent, or sound public policy reasons to support this outré position. Telenet's Application should therefore be dismissed.

Respectfully submitted,

ITT World Communications, Inc.

By:

Joseph J Jacobs
Joseph J. Jacobs

Theodore J Fischkin
Theodore J. Fischkin

Its Attorneys
67 Broad Street
New York, New York

Dated: August 27, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
TELENET COMMUNICATIONS CORPORATION)
)
Application for Authority to) File No. I-T-C-2634
Extend Packet Switched Data)
Communications Service from)
the Continental United States)
to the United Kingdom and Points)
Beyond.)

REPLY OF
WESTERN UNION INTERNATIONAL, INC.

Western Union International, Inc. (WUI) hereby replies to the Opposition of Telenet Communications Corporation (Telenet), dated August 3, 1976, to WUI's Petition to Deny Telenet's above-captioned application to acquire facilities to extend its domestic packet switched service to the United Kingdom and beyond. In support of this Reply, WUI submits the following:

1. In its Petition to Deny WUI clearly demonstrated that Telenet's application is fatally defective for want of an operating agreement with the United Kingdom Post Office (UKPO); that the requirements of Telenet's customers and other users can best be met by WUI, an established international record carrier (IRC), that could provide international access to all U.S. subscribers; that Telenet's application is inconsistent with the facts as well as being premature. Telenet's Opposition inadequately responds to or ignores WUI's arguments and, accordingly, must be denied.

2. In response to the clear showing by WUI and other IRCs that the UKPO has not agreed to operate directly with Telenet, the latter: (a) steadfastly maintains that it has reached agreement with the UKPO (Opp., pp6-7); (b) argues that to require an agreement prior to Commission authorization would put it in a "Catch 22" position (Opp, p.8) and (c) suggests that the Commission could condition a grant of Telenet's application on the latter's obtaining an agreement with the UKPO (Opp., p.8). Telenet is wrong as to (a) and (b) and is not entitled to the preferential treatment requested in (c).

3. The seven "fundamental questions" cited by Telenet (Opp. pp.6-7) as the essence of its alleged preliminary agreement with the UKPO in no way demonstrate any willingness on the part of the UKPO to operate directly with or interconnect with Telenet. Standing alone, the interpretation of these points most favorable to Telenet is that the UKPO has an interest in accessing Telenet's network but is silent on how it wishes this access to take place. However, these points do not stand alone. They must be read in conjunction with the UKPO's clear statement in its May 25 letter to Telenet:

> "...as far as the British Post Office is concerned, we have no agreement with Telenet Communications Corporation to establish a direct service nor to make a joint service offering." [emphasis supplied]

This language leaves no doubt as to the UKPO position -- it has no agreement with Telenet, formal or informal.

4. Telenet further argues that to require an agreement with the UKPO prior to a grant of Telenet's application puts the latter in a "Catch-22" position since the UKPO will not enter into an agreement with Telenet prior to Commission certification because, according to Telenet, to do so would give the appearance that the UKPO was attempting to establish a new IRC. (Opp. pp.7-8). This argument is belied by the experience of TRT Telecommunications Corp. which up until a few years ago had no Commission certification outside of the Latin American market. However, its successful efforts to enter the European communications market were based on operating agreements obtained prior to Commission certification -- indicating no hesitancy on the part of certain European telecommunications entities (including the UKPO) to enter into operating agreements with a non-certified carrier.

5. Thus, Telenet's suggestion that the Commission skirt the issue of Telenet's lack of agreement with the UKPO by conditioning a grant of its application on the obtaining of such an agreement (Opp. p.8) is nothing more than an unjustified request for preferential treatment. Telenet fully realizes that the existence of an operating agreement is a prerequisite to a grant of its application -- Telenet's unsuccessful attempt to obtain an agreement with the UKPO is proof of same. Without the details of an operating agreement, no meaningful evaluation can be made of Telenet's application and the same must be denied.

6. Furthermore, Telenet has neatly avoided WUI's argument that the public interest would be best served not by extending overseas Telenet's domestic franchise which represents only a small portion of the international packet switching market but by authorizing an IRC, like WUI, to provide the needed service to all U.S. subscribers via interconnection will all domestic packet switching systems. In this manner all those customers seeking access to international service using packet switching technology will be served in a cost efficient manner which minimizes the need for duplicative gateway nodes and international facilities.*

7. Looking beyond the immediate situation, it is clear that in the near future there will be many different types of domestic packet switching systems, and foreign telecommunications administrations throughout the world will have varying requirements for gaining access to these different domestic systems. The authorized IRCs, by providing the missing interface links between the foreign and domestic networks, will avoid costly duplicative facilities and equipment which would result if all U.S. domestic networks were authorized to extend their facilities overseas--to the ultimate benefit of the U.S. customer. The U.S. customer additionally benefits from this arrangement by gaining the option of selecting its domestic service for the advantages of that particular system and not

---

* It should also be noted that the UKPO, in its April 21, 1976 letter to Telenet, speaks in terms of its goal of "providing access to all duly authorized packet switching networks in the USA."

solely on the basis of the availability of international service. This option would not be available if some but not all domestic systems were authorized to expand overseas. Thus, the U.S. customer gains a dual advantage from WUI's approach.

8. The international gateway approach for linking packet switching networks recommended by WUI is similar to the approach submitted to the American National Standards Institute by its Ad Hoc Group on Packet Switching* on which Telenet was represented. Therein, under paragraph G entitled "Network - Network Interface (Gateway) Standardization", the Ad Hoc Group states:

> "The expected proliferation of both domestic and foreign public packet switching networks suggests the need and desirability of internetwork communication.
>
> * * * * *
>
> Several sources, including Cerf & Sunshine (1974) and Pouzin (1974) have suggested connecting networks by means of an intermediate conceptual device called a gateway. This approach seems promising both as a practical means of network interconnection and as a starting point for network-to-network standardization.
>
> For this discussion, a gateway may be considered a conceptual device which is linked to a switching node at one end and to another gateway at the other end. Two packet switching networks are interconnected via one or more pairs of gateways. A gateway for a given network

---

* Study of Areas for Standardization in Packet Switching, Final Report of X3S37 Ad Hoc Group on Packet Switching, Ira. W. Cotton, Chairman, Submitted to X3S37, February 7, 1975.

> must essentially transform packets from its network into a suitable intermediate form, and vice versa. In addition, it may have to translate addressing, accounting and control information to and from a suitable intermediate form for the gateway-to-gateway interface. The gateway-to-gateway interface could be unique for every pair of connected gateways; however, there are advantages to standardizing this interface. The primary advantage is that each type of network would need only one type of gateway. Connection of two networks at one or more points would involve connecting one or more pairs of gateways.
>
> While standardization of the gateway-to-gateway interface would be desirable, it should be noted that both packet switching networks and network interconnection are in early stages of development. Any proposed standard in this area should be flexible enough to allow the development of new network techniques and services."

The above quotation clearly indicates the need for a gateway packet switching node because it allows for the interconnection of the various domestic packet switching networks and is flexible enough to allow for the interconnect of new network techniques and services.

9. Through the conventional IRC/domestic interconnection arrangement, the public need expounded by Telenet (Opp. pp. 37-41) will be met but with the added advantages of cost efficiency and universal availability. The IRCs would perform technical and operational interface functions

similar to those performed in the traditional record services.* Thus, it is clear that no public benefit will be served by a grant of Telenet's application that can not better be served by WUI via interconnection with all domestic networks.

10. It is evident from the above that Telenet has totally failed to overcome WUI's primary arguments against Telenet's application and, accordingly, the latter must be denied. The follwing additional comments are, however, worthy of note:

(a) Telenet's characterization of its U.S./Canada service as "international" (Opp., p.9) is clearly erroneous in view of Section 222 of the Communications Act, of 1934, as amended, which classifies such traffic as domestic. Thus, Telenet's practices and experiences with such traffic are not applicable to the distinct international market served by the IRCs.

---

* For example, in cablegram service the IRCs convert the domestic format to the standard international F-31 format required by the overseas administrations. Similarly, the IRCs perform the speed and code conversion necessary to enable communications between the domestic TWX system and international telex. Similar functions are performed with respect to leased channel services.

(b) The seven factual inaccuracies in Telenet's application which WUI pointed out are simply that -- factual inaccuracies --- and Telenet's attempt to explain them away (Opp., pp. 16-23) doesn't change their character.

(c) Telenet's attempt to slough off the suggestion that the Commission conduct a broad inquiry into the question of further competition in the international field by stating that the Commission disposed of similar arguments in certifying Telenet's domestic service totally ignores the major differences between the international industry and the domestic communications industry that existed at the time of the Commission's Specialized Common Carrier Services decision*, e.g. the existence of vigorous competition in the international field as opposed to domestic monopoly unresponsive to new customer needs.

WHEREFORE, for the reasons stated herein and in WUI's Petition to Deny, WUI respectfully submits that Telenet's application should be denied.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Kathryn E. McDonnell
Its Attorney

One WUI Plaza
New York, New York 10004

Dated: August 27, 1976

---

* 29 F.C.C. 2d 870 (1971)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of TELENET COMMUNICATIONS CORPORATION Application for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond	)	File No. I-T-C-2634

To: The Commission

REPLY

RCA Global Communications, Inc. (RCA Globcom), hereby replies to the "Opposition of Telenet Communications Corporation" filed herein on August 3, 1976. Extensive comments are not required, as the Telenet "Opposition" is comprised of such inconsistencies that a brief demonstration of these serves well to impeach Telenet's position. In addition, however, we raise certain concerns we have with respect to the recent inauguration by Telenet of service to Canada.

The overriding inconsistency in the Telenet position concerns the admission by Telenet that while it has no operating agreement with the British Post Office (BPO), it nevertheless has "reached preliminary agreement" with the BPO concerning its proposed service.* Apart from the fact that

---

* Opposition, at 6.

Telenet previously has taken the position that the existence of an operating agreement is a condition precedent to eligibility for Commission authorization,* we again submit that there is nothing in the recent exchange of correspondence between Telenet and the BPO to support a conclusion that any agreement has been or is likely to be reached. See the May 4, 1976 Application at issue and the May 25, 1976 BPO letter responsive thereto.

Telenet ignores the fact that the same basic rules are applicable to all regulated carriers. An authorization or certificate requires all to satisfy the same basic public interest standard, including that there in fact be a correspondent at the other end of a circuit, ready and willing to accept messages or intelligence from the applicant. Absent such agreement, there can be no offer or provision of service.

In several respects, Telenet urges upon the Commission a policy of uneven-handed treatment of carriers subject to its jurisdiction. It would appear that the most stringent Commission regulation should be imposed, according to Telenet, upon The American Telephone and Telegraph Company, essentially a monopoly carrier.** Next, it appears the rigors of regulation should address what Telenet describes as the "already entrenched oligopoly in the international communications field,*** where, allegedly, undue rates of return are being earned.* Finally, minimal regulation should be accorded Telenet, it is argued, and other resale carriers in the first instance to permit them to determine the ratemaking approach that best suits them.** In other words, all carriers are to be regulated, but some carriers must be more regulated than others. We believe this "handicapping" approach to regulation is contrary to the often stated Commission determination that, where competition is introduced, existing carriers will be afforded an opportunity to compete fairly and fully without artificial constraints.

---

* Telenet "Reply" in Docket FCC No. 20097, February 24, 1975, at 14.

** Opposition, at 31-32.

*** Id., at 8.

We firmly believe that any introduction of additional competition into the international marketplace, as the Commission apparently is predisposed to permit,*** should be accompanied by the relaxation of regulation over existing competitors so as not to inhibit the benefits that are intended to flow from further competition. We would find it particularly abhorrent if we were subjected to continued rate of return regulation while those with whom we effectively were obliged to compete escaped such rigors. Thus, we believe that government rate regulation, normally felt required in the absence of competition, should be adjusted appropriately in the presence thereof.*

---

* Id., at 35.

** Opposition, at 27. We construe this to mean no rate regulation at all.

*** Resale and Shared Use Decision, FCC 76-641, released July 16, 1976. Telenet repeatedly relies on this recent Commission action to buttress its basic contention that unrestricted competitive entry is called for in the international arena. (See Opposition, at 5 and 27.) We are particularly intrigued by its reference thereto at pages 43-44 of its Opposition, and its apparent contention that RCA Globcom is merely a user or reseller of others' services and facilities. Does Telenet here suggest that we may be licensed to new points and for new services without demonstrating both economic consequence and public need? We rather enjoy the possibilities here, but are somewhat concerned in view of the long-established judicial standard which we believe to be wholly inconsistent with the Telenet position. See FCC v. RCA Communications, Inc., 346 U.S. 86 (1953), Hawaiian Telephone Co. v. FCC, 498 F.2d 771 (D.C. Cir. 1974).

Telenet flatly asserts that RCA Globcom and others have failed to pass reductions resulting from declining transmission costs, both in satellite and cable facilities, on to the public.** This assertion is patently false and, at best, reveals a lack of understanding on Telenet's part of the market it seeks to enter. Apart from rate reductions directly resulting from existing competitive forces, RCA Globcom has reduced rates as a result of the introduction of the TAT-5 Cable, the Transpac-II cable facility (Guam Telephone) and Commission rate integration policies resulting from the application of satellite technology, and it is to be reasonably expected that there will be further adjustment if the Commission's decision in the Comsat Rate Case* is upheld in the courts.

---

* We must assert that Telenet's use of the term "cartelize" (Opposition at 8) to describe existing carrier and market relationships in the international communications field is misplaced. We suggest that the only instance of real and effective competition in communications subject to Commission jurisdiction is in the international field.

** Opposition, at 35.

As we indicated in our initial "Comments" (at 8), there have been no IRC rate increases (unlike in the domestic field), notwithstanding the presence of considerable cost pressures over these past several years. Telenet's confusion on this point seems to parallel that regarding its inability to distinguish between an offer to contract, on the one hand, and a mere invitation to negotiate, on the other hand.

Finally, Telenet sees fit in its Opposition to announce proudly that it, in fact, "has already implemented and put into tariffed commercial operation an international packet switching service between the United States and Canada. . . ."** It does so apparently in the belief that its two weeks' experience in this regard* somehow amounts to "extensive technical and operational experience" in the field of international communications. Ordinarily, we would find a self-serving claim of this nature, however absurd, humorous except for the fact that our investigation at the Commission as to the warrant of Telenet's authorization to extend its service to Canada reveals some unsettling facts. Accordingly, we believe it appropriate to relate our concerns within the context of this license proceeding since it is Telenet which contends its Canadian "experience" is relevant.

---

* 56 F.C.C.2d 1101 (1975) appeal docketed sub nom. Communications Satellite Corporation v. FCC, D.C. Cir. No. 75-2193.

** Opposition, at 9-10, 26.

Telenet's original authorization encompassed "a communications network in the contiguous United States and District of Columbia."** On information and belief, additional authorizations were obtained to expand the geographic scope of its network within the United States. Such extension, it would appear, was fully consistent with Telenet's original grant of authorization.

However, on or about November 28, 1975, Telenet filed for authority under then existing provisions of

---

* The Telenet tariff revision inaugurating its extension of service to a new point, Canada, was effective July 23, 1976 on one day's notice.

** 46 F.C.C.2d 680 (1974). Initial service was commenced on August 15, 1975 with a tariff filing covering switching centers in seven U.S. cities.

Section 63.03(a) of the Commission's Rules and Regulations* "to supplement" its existing U.S. Section 214 authorizations to provide service to Canada. (See Application, FCC File No. W-P-C-661, a copy of which is attached hereto.) By informal and automatic grant procedures, effective December 9, 1975, Telenet apparently believes it was "authorized" to extend its service to Canada.

We believe that such a "boot strap" extension by Telenet of its service was wholly inconsistent with the Communications Act of 1934, as amended, and Commission policies and practices thereunder. Indeed, under the new provisions of Section 63.03, that section expressly cannot apply where facilities are sought to serve "one or more points of service not previously authorized to the applicant for the type of service involved." See Section 63.03(a)(2). As this recent revision to Section 63.03 involved a "clarification" and not a substantive revision, we believe that the Rule applicable to Telenet when it filed in November, 1975 did not permit extension of service to a point "not previously authorized" - in this case Canada.

---

* Such Section was amended by the Commission, effective May 26, 1976, in order "to clarify the circumstances under which the authorization of facilities as supplemental small projects will be considered appropriate ...." In Re Amendment of Part 63 of the Commission's Rules and Regulations, FCC 76-429, May 18, 1976, at Para. 4.

Moreover, the attached informal Telenet Application appears to address a need to furnish access to facilities to a single customer in Ottowa; yet, an examination of materials supplied by Telenet in regard to its recent Canada tariff filing indicates that such Application is the basis for "commencement of international service between the U.S. and Canada ...."(Telenet Transmittal Letter No. 8, July 22, 1976, at 1), including the cities of Toronto, Montreal, and Ottowa (Telenet Section 61.38 Data, at 5). It is further intended that Telenet service will be extended to other Canadian cities under "a phased expansion plan" (Telenet Section 61.38 Data, at 8).

We believe that the means selected by Telenet to initiate Canadian service were particularly inappropriate and raise substantial questions as to its qualifications to continue to hold Commission licenses.

In any event, Telenet clearly lacks the requisite authority to implement any tariff to extend its service to Canada. Accordingly, it would follow that its existing Canada tariff should be rejected by the Commission.*

---

* See Matter of Press Wireless, Inc., 25 FCC 1466 (1958); In Re Execunet, FCC 76-622, released July 13, 1976; Matter of RCA Communications, 34 FCC 171 (1963); Western Telephone System, Inc., FCC 64-974, released October 29, 1964; In Re AT&T 46 FCC 2d 13 (1974).

For all the above reasons, and those set forth in our original "Comments" herein, we believe the Commission must reject the subject Telenet Application.

Respectfully submitted,

RCA Global Communications, Inc.

By:

/s/ F. J. DeRosa (D.J. Elardo)
F. J. DeRosa
60 Broad Street
New York, New York 10004

/s/ D. J. Elardo
D. J. Elardo
2030 M Street, N.W.
Washington, D.C. 20036

Its Attorneys

Dated: August 27, 1976

Before the
RECEIVED
FEDERAL COMMUNICATIONS CORPORATION

Washington, D.C. 20554

RECEIVED BY FCC
NOV 24 1975

DOMESTIC TRANSMISSION SYSTEMS BRANCH

RECEIVED
NOV 24 1975
FACILITIES DIVISION
COMMON CARRIER BUREAU

ELENET COMMUNICATIONS CORPORATION)
)
Application for Supplementation)
of Existing Section 214)
Authorization)

File No. W-P-C-661

Application is hereby made for authority, pursuant to Section 63.03(a) of the Commission's Rules and Regulations, to supplement the existing Section 214 authorizations of Telenet Communications Corporation in the manner detailed below. In order to meet operational commitments of the company, it is requested that Special Temporary Authority be granted to permit Telenet to acquire and operate the referenced channels by December 1, 1975, pending the grant of permanent authorization for such channel.

Telenet has received an order from a prospective customer for a leased access channel of more than ten miles in length, to extend from Telenet's Central Office in Chicago, IL to the Canadian border at Port Huron, MI. A corresponding channel will be furnished to the customer by the Trans-Canada Telephone System (TCTS) to extend from the border crossing point to the customer's premises in Ottawa, Ontario, Canada, to enable the customer to access Telenet's network in the U.S. Accordingly, Telenet hereby requests Section 214 authorization to acquire the following channel from AT&T:

om: lenet Central fice Location	To: Canadian Border	Mileage[1]	Number of Channels	Channel Type[2]	Speed (bps)	Annual Rental[3]
icago, IL	Port Huron, MI	276	1	Analog	4800	$6,035

Charges to the customer for the entire end-to-end Chicago-Ottawa channel, as well as for the use of certain communications equipment located on the customer's premises in Otta[illegible] and for the transmission of traffic over the channel will be made by TCTS pursuant to tariff provisions to be filed by TCTS with the cognizant Canadian regulatory authorities. Telenet will, in turn, recover from TCTS its charges for the U.S. portion of the channel, along with certain charges for connection to and utilization of its network.

TCTS has announced plans to introduce a public packet-switched data communications service, called Datapac, among a number of Canadian cities within the coming year. Interconnection of Datapac and Telenet facilities is planned, and at such time the customer channel for which application is hereby made may be discontinued in favor of providing service to such customer via the Datapac-Telenet interconnection.

Telenet has no existing facilities between these points. Other pertinent information regarding the applicant and the public need for its service is already on file with the Commission.

Inasmuch as these facilities are to be acquired by lease rather than construction, this application is not a "major action" as defined in Section 1.1305 of the Rules.

---

[1] Mileage calculated on the basis of AT&T's V-H coordinates.

[2] AT&T Series 3002 channel.

[3] Based on AT&T Tariff F.C.C. No. 260; includes data set at Chicago, Illinois.

Telenet's check in the amount of $15.00, in payment of the requisite filing fee, is enclosed.

In the event of questions concerning this application, please communicate with the undersigned.

Respectfully submitted,

TELENET COMMUNICATIONS CORPORATION

By______________________
Philip M. Walker
Vice President and
General Counsel

(original and 9 copies)

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
GRAPHNET SYSTEMS, INC.	)	
	)	
Application for Authority to Permit Use of Facsimile Service to Communicate With Terminal Devices Located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany.	)	File Nos. I-P-C-11 I-P-C-11A

To: The Commission

REPLY OF
ITT WORLD COMMUNICATIONS INC.

ITT World Communications Inc. (ITT Worldcom) hereby replies to the Opposition of Graphnet Systems, Inc. (Graphnet) respecting petitions to deny the above captioned application which were filed by ITT Worldcom and other international record carriers.

While a number of substantive defects have previously been shown to exist in Graphnet's application to serve overseas points, Graphnet largely ignored those defects in its opposition, contenting itself with summary denials, where it even chose to address those substantive arguments. It has instead concentrated its "fire" on objections to the patent procedural defect in its application--the lack of an operating agreement with the appropriate overseas administrations. With respect to this obvious deficiency, Graphnet has engaged in a sophistic attempt to establish a predisposition by the Commission to waive this essential requirement, at least for Graphnet. To this end, Graphnet has launched an intemperate and clearly unwarranted attack on the basic fairness of the overseas administrations, in combination with a base appeal to latent chauvinism which it apparently believes may exist in the Commission or its Staff. Graphnet apparently hopes that this "nationalistic" ploy, together with a melange of vituperation against the IRCs, for having the temerity to suggest weakness in Graphnet's master plan for overseas service, will obfuscate the very real defects in its application.

Graphnet's attention to even this water shed issue is devoted, almost entirely, to the Commission's policy of requiring an overseas operating agreement before authorizing a U. S. carrier to provide overseas service, and Graphnet's lack of any such agreement. Graphnet's arguments on this issue can be summarized as follows:

1. The bases for the policy are not appropriate to the service proposed by Graphnet; and
2. The overseas administrations and the U. S. IRCs are engaged in an international conspiracy to keep Graphnet 's "better mousetrap" away from the overseas market.

Neither of these arguments will withstand serious analysis.

In seeking exemption for itself from the Commission's policy of requiring carriers to evidence overseas operating agreements before certification for such overseas service will be granted, Graphnet posits that nothing in the Communications Act requires that such an operating agreement exist prior to the grant of a Section 214 application for overseas service. It further argues that the Commission's application of this policy has been "flexible",[1] and that approved Section 214 application often have contingencies associated with them which must be resolved after the authority is granted.[2] Finally, Graphnet urges that the rational for the Commission's "prior-agreement" policy is found in the Commission's rate-base regulation of the IRCs and its need to evaluate the long-term cost factors resulting from negotiated

---

[1] It is noteworthy that all of the examples cited by Graphnet in support of its flexibility thesis were rate or tariff matters, not facility or certification questions. Moreover, to the extent Graphnet finds comfort in the Commission's recent Report and Order in *Resale and Shared Use of Common Carrier Service and Facilities*, in Docket 20097, ____ F.C.C. 2d ____, F.C.C. 76-641, released July 16, 1976, ITT Worldcom would note that this decision is already involved in litigation respecting its applicability to overseas services and facilities, and in any event, the Commission cannot realistically expect any resale or shared-use of such a subdivided communications facility to be effected without the agreement, and indeed, the active cooperation of the concerned overseas administration. A number of overseas administrations have already advised ITT Worldcom that they will not permit shared-use or resale of their facilities irrespective of this decision. See, e.g., Appendices B & C of ITT Worldcom's Application for Stay Pending Judicial Review, dated August 16, 197

[2] As Graphnet recognizes, however, these "contingencies" are of the nature of refinement of previously negotiated contractural matters, not, by any stretch of the imagination, a contingency involving the lack of even a general "meeting of the minds" on the rather basic matter of an overseas operating agreement.

IRC equity interests in transmission media; and, for inexplicable reasons, Graphnet concludes that this "prior-agreement" policy is more appropriately applied to carriers which already have other operating agreements with overseas administrations than to neophytes such as Graphnet. Concluding, Graphnet urges that the "prior-agreement" policy should not be applied to it because it has no existing relationships with overseas administrations and that, as a Specialized Carrier entity, it is not subject to traditional rate-base regulation by the Commission.[3]

The Commission's "prior-agreement" policy is soundly conceived, has been in use for a substantial period of time, has been consistently and even-handedly applied by the Commission to all applications for overseas service,[4] and serves a clearly useful function--that of avoiding wasteful litigation over applications for overseas services where the proposed service obviously could not be implemented because

---

[3] In this context note must be made of Graphnet's chameleonic perception of its status as an operating entity. Responding to ITT Worldcom's assertion that Graphnet's status as an "authorized user" (for obtaining circuitry directly from COMSAT) was questionable, Graphnet indignantly asserted its status as a "certified common carrier" equal to that of "any other carrier". In attempting to overcome defects in its instant application, however, Graphnet repeatedly urges that, as a "Specialized/ Resale carrier", its application should be subjected to a "lesser standard" than that used for "more traditional common carriers".

[4] That there may have been occasional exceptions to this policy through the years in no sense demonstrates, of itself, any basis for excepting Graphnet's instant application from this policy.

Y

of lack of agreement, or reasonable anticipation thereof, from the overseas "partner" for the proposed service. Indeed, Graphnet does not challenge the purposes of the basic policy, but simply doffs its "Specialized/Resale" carriers hat and claims its due as a special exception to the rule. Graphnet offers no basis, other than chauvinistic rhetoric, for creating an exception for it from the "prior-agreement" policy. It offers no evidence that it has even approached any overseas administrations in the European locations it seeks to serve, for discussions as to possible operating arrangements. (Graphnet does appear to have approached one administration, Italcable, which categorically rejected the possibility of an operating agreement with Graphnet). Therefore, the "record" before the Commission would suggest the soundness of application of this established policy.

It is interesting to note that in an effort to finesse the impact of the Italcable rebuff, Graphnet has attempted to read some conspiratorial gloss into the fact that in advising the IRCs as to the action it took, Italcable quoted both Graphnet's telexed inquiry and the Italcable response. Certainly, one would not have made sense without the other. Nevertheless, Graphnet decries the fact that it cannot "even communicate" with an overseas administration "without their feeling obligated to immediately report such facts to the U. S. IRCs". The umbrage feigned by Graphnet that Italcable would have notified the U. S. IRCs, as to the results of its negotiations with Graphnet, is totally inappropriate.

As is obvious from the face of the Italcable message, it was sent after the conclusion of discussions with Graphnet and was clearly sent as a courtesy to other U. S. carriers to advise of that conclusion.

Graphnet's hypothesis that the rationale for the application of the "prior-agreement" policy is based on the Commission's rate-base regulation of "traditional common carriers" must have been plucked from the same "ether" from which Graphnet apparently "derived" its traffic and revenue projections for this application. Graphnet offers no support for its hypothesis, and ITT Worldcom is aware of none. Moreover, this hypothesis conflicts with known facts. As Graphnet should be aware, the Commission has consistently applied this policy to overseas applications whether the overseas facilities to be used were cable circuits, where IRU interests would be obtained, or satellite circuits, which are simply obtained, pursuant to tariff, from COMSAT.[5/] Finally, even assuming arguendo such a distinction existed, Graphnet could not use it as the basis for special treatment. As already shown

---

[5/] Graphnet's argument that the "prior-agreement" policy should apply to established carriers which already have working relationship with overseas administrations but not to neophyte carriers such as itself defies all logic. Reasonably, the Commission would have greater, not lesser, concern over the terms of an operating agreement for a carrier which had never before negotiated such an agreement, than for carriers with established histories of operating agreements and working relationships with overseas administrations.

in the petition to deny this application, the service proposed to be offered by Graphnet differs in no substantive respect from service already provided by the IRCs. Thus, if Graphnet wishes to provide such a comparable service in competition with existing carriers, equity demands that it be subject to the same ratemaking standards and constraints imposed upon those existing carriers.

Turning to Graphnet's intemperate attack on the overseas administrations as being, in effect, hand-maidens for the U. S. IRCs in a purported IRC quest to establish a "veto" over new overseas carriers, ITT Worldcom submits that Graphnet has demonstrated a serious misunderstanding of the relationship between the U. S. IRCs and their overseas counterparts.[6/] As a general rule, the overseas administrations function in a dual role: (1) As an operating entity, and (2) as a State telecommunications administration, roughly comparable to the F.C.C. In their operating role those administrations function as "partners" of the U. S. international carriers for the through transmission of international telecommunications traffic. But in their alternative "state" role, those administrations function as opposites and equals to the F.C.C., and, at least as ITT Worldcom understands, relation between the Commission and those "State" administrations are governed by considerations of

---

[6/] Graphnet's singularly undiplomatic tirade against the overseas administrations hardly seems conducive to the establishment of a working relationship, which Graphnet allegedly seeks, with those administrations.

comity and diplomatic negotiation.[7]

As the Commission knows, various overseas administrations have, from time to time, made known their preference not to have to deal with an ever increasing number of U. S. international carriers. And, while at a philosophical level, this attitude may seem to conflict with the Commission's emphasis on competition as a fundamental regulatory tool, in practical effect, those overseas administrations have hardly sought to "stonewall" the Commission's efforts to achieve increased competition.[8]

---

[7] See the Commission's *TAT-VI* decision (American Telephone and Telegraph Co., 35 F.C.C. 2d 801, 818 (1972)) where it stated, "...we recognize international communications to be mutual effort among telecommunications entities of several nations and require, by their nature, *the utmost effort by those concerned to cooperate in resolving differences of opinion and objectives*. The Commission appreciates the requirement, and will, to the greatest extent possible consistent with United States national law and policies, attempt to meet the desires of overseas telecommunications entities and other communications and exchange with such entities". (Emphasis added). See also, *Further Notice of Inquiry in Docket 18875* (F.C.C. 75-181, released February 25, 1975) ("...we are keenly mindful of the fact that the United States is a party of interest in a broad community of many countries that also have concerns and responsibilities with regard to international communications systems which provide services among countries...").

[8] Consider, for example, the recent experiences of TRT Telecommunications Corporation, which until very recently had no operating relationships with European Administrations, and yet has now negotiated, with apparent ease, operating agreements with substantial number of those administrations.

In this light, ITT Worldcom submits that the Commission should not unilaterally attempt, as Graphnet urges, to force an additional U.S. international carrier upon the overseas administrations, particularly in the absence of some compelling public interest benefit to be derived from the would-be new carriers proposed service, a criteria clearly not apposite here--as shown in the petitions to deny, Graphnet's proposed service offering simply duplicates some of the services presently provided by existing U.S. international carriers.[9] And, no matter how carefully drawn, any Commission order establishing a conditional overseas authorization subject to the establishment of overseas operating agreements will, with near certainty, be construed by the overseas administrations as an effort by the Commission to impose its judgement on them;[10] such a "constructive" U.S. position would, at least in the long-term, necessarily result in deterioration of telecommunications relationships between the U. S. Government and overseas administrations. Clearly, Graphnet's request for a "Letter of Marque" must be denied.

---

[9] Graphnet offers a one line denial of this proposition, but the petitions have shown with specificity the substantive identity of Graphnet's proposed services with existing IRC services. Rather obviously, Graphnet is unable to provide any specific refutation to show any substantive novelty in its proposed service.

[10] Even aside from the basically unilateral Commission act, itself, the natural and predictable tack for the contingent overseas carrier's negotiators would be to press its case for an operating agreement as being the will of the U.S. Government. That situation would be even further exacerbated in the instant case, where such a Commission action would directly follow the unequivocal rejection of Graphnet's preliminary inquiry by at least one overseas administration.

In its very brief effort to refute the substantive defects[11/] shown by the petitions to deny its application, Graphnet's response boils down to the glib rationalization that it did its best, and a plaint that its application should be subjected to a lesser standard than that imposed upon the "more traditional common carrier[s]". Graphnet well knows that the substantive defects in its application which have been raised require specific answers from Graphnet. Without at least some answer

---

[11/] Graphnet's application also includes an obvious throw-away procedural argument that the IRCs petitions to deny, to the extent they seek rejection or dismissal of Graphnet's application, may be improperly filed Petitions for Reconsideration of the Commission's initial acceptance of that application. ITT Worldcom would refer Graphnet to F.C.C. Report No. I-P-C-241, which announced that the Graphnet application had been accepted for filing and which contained the legend: ..."All applications listed are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's Rules, Regulations and other requirements"...See also, Section 1.564(b) of the Commission's Rules and Regulations.

from that carrier, the Commission cannot even seriously consider its application.[12/]

Finally, ever the opportunist, Graphnet seeks, in its "Conclusion", to establish itself as a "resale" carrier pursuant to the Commission's recently released opinion in Docket 20097, in the apparent belief that the criteria for "resale" authorization are easier to meet than either those for "specialized" carriers or for "traditional common carriers". In addition, to the likelihood of protracted litigation over the reasonableness of applying the Commission's Resale and Shared Use policies to international carriers, as previously noted, it is ITT Worldcom's understanding that even if those policies were adopted they would apply to sellers of

---

[12/] A substantial misrepresentation was made by Graphnet, which it had every reason to know was false, in its effort to dismiss an argument of RCA Globcom respecting an undue competitive advantage which would be gained by Graphnet over the IRCs as a result of its domestic operating authority. There, Graphnet chided RCA Globcom for opposing its application and not having opposed "the recent proposal by ITT Worldcom to extend its international services domestically through ITT Domestic Transmission Systems, Inc." The plain fact, as Graphnet well knows, is that ITT Worldcom has made no such proposal. The application file which it references is the application of ITT Domestic Transmission Systems, Inc., a completely separate subsidiary of International Telephone and Telegraph Co., for domestic operating authority. In that connection, it is interesting to note, the sharp contrast between Graphnet's strident opposition to the Domestic Transmission Systems' application, on grounds that it would permit a domestic company and an international company to be owned by the same corporate parent, and the instant application which would combine domestic and international authority in the same operating entity.

subdivided parts of basic voice-grade bearer circuits. Hence, Graphnet's services would not seem to be within the contemplation of the Resale and Shared Use decision even if The Court of Appeals sustains the application of this decision to international carriers.

Wherefore, for the reasons shown hereinbefore, as well as in ITT Worldcom's Petition to Deny the instant application, ITT Worldcom respectfully urges the Commission to dismiss or deny this application.

Respectfully submitted,

ITT World Communications Inc.

By:

Joseph J. Jacobs

s/ John A Ligon /JJJ

John A. Ligon

Its Attorneys
67 Broad Street
New York, N. Y. 10004

Dated: August 27, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GRAPHNET SYSTEMS, INC.	)	
	)	
Application for Authority to Permit	)	File Nos. I-P-C-11,
Use of Facsimile Services to	)	I-P-C-11A
Communicate With Terminal Devices	)	
Located in Belgium, Denmark, France,	)	
Italy, The Netherlands, Norway,	)	
Spain, Sweden, Switzerland,	)	
The United Kingdom and West Germany	)	

To: The Commission

REPLY

RCA Global Communications, Inc., (RCA Globcom) hereby replies to the "Opposition On Behalf of Graphnet Systems, Inc." (Graphnet) filed on August 10, 1976.

Graphnet effectively has abandoned the prosecution of the subject Application in recognition of the fact that, as indicated in our Supplemental Petition to Deny, it could not implement its proposed service beyond an Atlantic Ocean satellite even if its Application were granted by the Commission. With this the case, and for other reasons stated below, its Application is subject to immediate dismissal and return.*

In lieu of answering our objections,** Graphnet seeks to make this proceeding over into a broad rulemaking undertaking in which the Commission is requested to implement novel and, we believe, inappropriate policies in respect of international communications common carriage. Graphnet thus raises a number of collateral issues, none of which are relevant to its defective Application and all of which, in terms of the treatment accorded them by Graphnet, serve to disclose a remarkable lack of understanding of international communications. We believe that certain of these issues merit our response.

---

* The fact that Graphnet's Application, as amended, has been placed on public notice does not foreclose the dismissal and return of such Application at this time. Public notice of any Section 214 application generally is subject to

> ". . . further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's Rules, Regulations and other requirements."

** Essentially, in both its original Application and the amendment thereto, Graphnet has attempted to gain access to Europe over other carriers' services, the tariffs for which plainly fail to provide Graphnet with the vehicle it would require to implement its proposed European offering.

Graphnet's abandonment of the prosecution of the subject Application and its attempt to make over this proceeding into a broad reexamination of long-standing Commission policies clearly is inappropriate. Such attempt only serves to highlight the inadequacies of the subject Application.

Graphnet, by its own admission, "does not enjoy an existing carrier-to-carrier relationship with foreign correspondents"* and, further, it appears unlikely that it will achieve such relationships.** It concededly has no "final agreements" with any foreign entities for the interexchange of traffic and, implicitly, its efforts abroad have met with no success whatsoever even in the way of "preliminary" understandings, whatever their merit might be.***

Evidently, to compensate for its lack of success, Graphnet now alleges that the existing international carriers possess the capability to control their foreign correspondents, and are exercising such capability to foreclose Graphnet from international markets. This reckless and wholly unsubstantiated accusation is contradicted by the record in numerous Commission proceedings, wherein the independence of the foreign entities concerned has been recognized. (See, e.g., Docket FCC No. 18875.) Based upon these premises, Graphnet urges that its Application be granted immediately so that it might then go abroad to seek necessary operating agreements with foreign administrations.

---

* Opposition, at 8.

** See Opposition, Appendix B, Italcable message regarding Graphnet. Graphnet's statement that: "None of the protestants asserts that, if granted the authority requested, Graphnet would be unable to negotiate an appropriate agreement with the foreign correspondents." Opposition, at 4. No such assertion is necessary; Graphnet's pleading speaks for itself in that regard.

*** In a concurrent proceeding, Telenet Telecommunications Corp. claims to have reached such preliminary understandings with the British Post Office as to justify a grant of its application to serve the United Kingdom.

In Commercial Cable Co. et al., 28 F.C.C. 285, 290-91 (1960), the Commission stated, with respect to pending Section 214 applications of international carriers, that authorizations properly would not be granted until the applicants had completed negotiations with their foreign correspondents and had advised the Commission of the terms and conditions under which the facilities would be operated. With regard to one of the applicants, the Commission stated:

> ". . . Such application lacks data with respect to such matters as concurrence of the foreign correspondent, which owns and controls the other half of the cable circuit in the proposed operations, the terms and conditions of the proposed service, and the division of tolls between the carriers. These data are essential and must be before us before we can reach the necessary conclusions as to whether the public convenience and necessity require provision of the service. This is particularly true in a competitive situation, because unless we know exactly what terms have been offered the foreign correspondent, and whether such terms are more favorable than those offered by competing U.S. carriers, we cannot

> make the necessary determinations either with respect to the economic feasibility of the service or with respect to the overall public interest of a grant." (At 290.)

Hence, Graphnet's claim that

> ". . . neither the Communications Act nor the Commission's regulations require a formalized agreement with a foreign correspondent as the _quid pro quo_ for a grant of the type of application here involved."*

is patently in error. The above has long constituted Commission policy and, we submit, ought not to be subject to reexamination within the narrow context of the instant matter based upon insubstantial and unsubstantiated charges.

Graphnet repeatedly cites the Commission's recent action in Docket F.C.C. No. 20097** as justification for grant of the instant application.*** We wish merely to point out that, with respect to that portion of the decision pertaining to international communications, an appeal presently is pending before the Second Circuit Court of Appeals and numerous requests for stay, including one by RCA Globcom, now are pending before the Commission. It clearly would be premature in the circumstances to base any action with respect to the instant application upon the principles enunciated in that proceeding.

---

* Opposition, at 5. Graphnet subsequently includes Commission "policy" within the ambit of its sweeping claims. (Opposition, at 6.)

** _Shared Use and Resale_, FCC 76-671, released July 16, 1976.

*** See, _e.g._, Opposition, at 6, 7, 14 and 18.

Assuming arguendo that the Commission's recent action in Docket No. 20097 is upheld in its present state, we believe it significant, as does Graphnet, to recite the announced standard for evaluating applications of communications service resellers. At Paragraph 108, the Commission stated:

> "[W]e will require that applicants seeking certification as common carriers providing resale services establish that they are technically, legally and financially qualified to provide the service which they propose."

Graphnet asserts that none of the protestants "has disputed Graphnet's technical, legal or financial qualifications to provide the service for which it here requests authorization."* We shall avail ourselves of the opportunity now to do so herein.

With regard to Graphnet's technical qualifications, we draw the Commission's attention to Western Union International's Petition to Deny filed herein, at pages 4-6. Serious question exists as to whether Graphnet has implemented the type of system described in its domestic authorization and, hence, whether it has the capability to do so at all. We do not view such system as "packet switching" in terms of what we perceive to be the Commission's understanding of that concept.

With regard to Graphnet's financial qualifications, we note that its present desire to extend its service to a substantial portion of Western Europe would be an ambitious undertaking that would require considerable financial commitment. We believe it would be appropriate for the Commission, in behalf of potential Graphnet subscribers, to make inquiry of Graphnet (if operating agreements were derived and the Commission were inclined toward granting the requested authorization) as to its financial capability to implement the proposed service.

---

* Opposition, at 18.

Finally, with regard to Graphnet's legal qualifications to serve as a Commission licensee, we include herein, as Attachments A and B, our "Comments" and "Reply," recently filed in regard to a Graphnet "Contingent Application" (W-P-C-950) to enhance substantially the nature of its domestic service offering. As Graphnet has asserted in the instant Application that "the service here proposed does not materially differ from the services which Graphnet has already been authorized to provide within the United States,"* and as it further has contended in its "Contingent Application" that it "believes that its current [and only] Section 214 authorization already permits provision of the services (t)herein,"** it is obvious that Graphnet considers the Application at issue to include services substantially broader than those which merely "permit communications by Graphnet subscribers with addressee facsimile terminal locations . . . ."* Emphasis supplied. In the circumstances, the instant Application appears to be broader in scope and intent than Graphnet elects to admit and, we believe, this raises serious questions about its candor before the Commission. In any event, were Graphnet's Contingent Application to be granted by the Commission, it would not be uncharacteristic of Graphnet to contend that such a grant *ipso facto* constituted authorization to enhance beyond "packet switched facsimile communications service" any international authorization it might receive.

---

* Application, at 3.

** Contingent Application, at 2, 14.

Conclusion

The subject Application can and should be dismissed and returned to Graphnet by the Commission without further substantive consideration. The proposed service offering cannot be implemented and Graphnet in its Opposition concedes this fact. It chooses, rather, to request that the Commission, within the narrow context of this proceeding, reexamine and redefine long-established and sound policies based upon Section 214 of the Act on the basis of insubstantial and unsubstantiated claims regarding the conduct of both the existing international carriers and their foreign correspondents. Such claims, like its Application, merit no Commission consideration.

---

* Application, at 1.

Respectfully submitted,

RCA Global Communications, Inc.

By:

/s/ F. J. DeRosa (D. J. Elardo)
F. J. DeRosa
60 Broad Street
New York, New York 10004

/s/ D. J. Elardo
D. J. Elardo
2030 M Street, N.W.
Washington, D.C. 20036

Its Attorneys

Dated: August 27, 1976

ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
GRAPHNET SYSTEMS, INC.)
) File No. W-P-C-950
Contingent Application for Supplemental Authority to Provide Certain Digital Communication Services)

To: The Commission

COMMENTS

RCA Global Communications, Inc., (RCA Globcom) hereby offers its comments responsive to the above-captioned Graphnet Systems, Inc., (Graphnet) Application.

It appears that Graphnet's major objective in submitting the instant Application is not to obtain "supplemental authority" to expand considerably its service offerings but, rather, to contend that it requires no additional authorization to do so and, in this regard, to address certain contentions made by the Western Union Telegraph Company (Western Union) that Graphnet is attempting to provide services which it has not been authorized to furnish. Hence, the Application is termed "Contingent" with a view toward eventual Commission action on the Western Union position that Graphnet tariff revisions pertaining to services described in its Application ought to be rejected. Thus, the subject Application is a "procedural vehicle" for Commission consideration and disposition in the event that it finds and concludes there is merit in Western Union's position.

Our concern arises from Graphnet's apparent belief that its "current certificate authority" is sufficiently broad in scope to encompass the services described in the instant Application. We cannot agree. We do not believe that Graphnet's single authorization* includes, or was intended by the Commission to include, the described services, and we have so asserted in pleadings addressing other Graphnet Section 214 Applications.**

Heretofore, Graphnet has never alleged that its authorization permits it to furnish communications in conjunction with other than output facsimile terminals. In the instant Application, however, it appears to claim that its authorization extends to a full range of services involving various digital output devices. Clearly its original (and only) authorization was not so all-encompassing.

Of course, Graphnet is free, as is any other entity, to make a Section 214 Application for any service it desires and is able to furnish. However, we have difficulty with Graphnet's assertions in the instant Application that it already possesses the authorization necessary to provide the described services.*** We thus, object to Graphnet's expansive and unilateral interpretation of its single authorization. We cannot agree that the services described fall within "packet-switched facsimile communications services" and, therefore, we do not believe these may be provided by Graphnet without an appropriate grant of additional authorization.*

---

* In Re Graphnet, 44 F.C.C. 2d 800 (1974).

** See RCA Globcom "Comments" dated March 17, 1976, pertaining to Graphnet's application to extend its services to Hawaii (F.C.C. File No. W-P-C-721), at 8; RCA Globcom "Petition to Dismiss or Deny", dated July 2, 1976, pertaining to Graphnet's application to extend its services to 11-European nations (I-P-C-11A), at 4-6.

*** See Contingent Application, at 2, where it is asserted "Graphnet believes that its current Section 214 authorization already permits provision of the services herein" and, at 14, where Graphnet states:

> "...Graphnet believes that the services described herein are already encompassed by the Commission's 1974 action."

We take no position otherwise on the merits of its Application, including whether it meets the requirements of Section 214 of the Act and Part 63.01 of the Commission's Rules and Regulations.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

/s/ Francis J. DeRosa (By DJE)
Francis J. DeRosa
60 Broad Street
New York, New York 10004

/s/ Donald J. Elardo
Donald J. Elardo
2030 M Street, N.W.
Washington, D. C. 20036

Its Attorneys

Dated: July 14, 1976

---

* *Cf.* Letter of July 2, 1976 from Walter R. Hinchman, Chief, Common Carrier Bureau to Richard J. Glasgow, Director, Tariffs, Graphnet Systems, Inc., regarding Graphnet Transmittal No. 20 and accompanying tariff revisions.

ATTACHMENT B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
GRAPHNET SYSTEMS, INC.)
)
Contingent Application for) File No. W-P-C-950
Supplemental Authority to)
Provide Certain Digital)
Communication Services)

To: The Commission

REPLY

RCA Global Communications, Inc., (RCA Globcom) hereby replies to the "Opposition to Petition to Deny" filed herein by Graphnet Systems, Inc. (Graphnet).

Graphnet is authorized to provide domestic "packet switched facsimile communication services."* Such authorization is subject to the express condition that no expanded service offering be marketed by Graphnet without prior Commission approval,** a condition which Graphnet has violated by its first filing tariff amendments and, thereafter, its seeking the authorization herein to do so.*

---

* 44 F.C.C.2d 800, 803 (1974).

** Id. If, as Graphnet contends, its sole authorization already permits the services described in the instant application, one indeed is hard pressed to speculate upon the nature of any expanded service which the Commission intended to be beyond the limits of the authorization it granted.

To dispel any question that Graphnet's authorization is limited, as above-mentioned, we note the recent Bureau action rejecting a Graphnet tariff amendment for a service which did not fall "within packet switched facsimile communications service."** The Bureau clearly confirmed the limited nature of Graphnet's authorization, and the applicability of the condition imposed therein with regard to expanded Graphnet operations. Accordingly, Graphnet's assertion that the expanded services described in the subject application are already encompassed by its existing authorization finds no support either in clear Commission or Common Carrier Bureau language relevant to the nature and extent of its authorization.

Apart from the question as to whether Graphnet's operations are at all "packet switching," we note the ever-expansive view accorded by Graphnet to the definition of "facsimile transmission." In its original Application, Graphnet defined this concept as:

---

* Such tariff amendments are subject to rejection. See Matter of Press Wireless, Inc., 25 FCC 1466 (1958); In Re Execunet, FCC 76-622, released July 13, 1976; Matter of RCA Communications, 34 FCC 171 (1963); Western Telephone System, Inc., FCC 64-974, released October 29, 1964; In Re AT&T, 46 F.C.C.2d 13 (1974).

** Letter from Walter Hinchman, Chief, Common Carrier Bureau, to Richard Glasgow, Director-Tariffs, Graphnet, dated July 2, 1976, at 2.

> "A method of communications that enables the image of an input source document to be transmitted over a communications facility, with the generation of an accurate copy of the original source image on a remote receiving device." (Graphnet Application, File No. P-C-8586, dated March 9, 1973.)

We believe the above is precisely the service Graphnet sought and was authorized by the Commission to furnish, and that the expanded offerings covered in the subject Application (and in the tariffs already on file) cannot be accommodated by this definition. Authorization to furnish "packet switched facsimile communication services" does not constitute an authorization to furnish data communications, a concept far broader in scope than was contemplated by the Commission in its original grant of authorization.

For the above reasons and those set forth in our "Comments," we respectfully request the Commission to find and conclude that Graphnet lacks the authority under its current authorization to provide the expanded domestic data communication services that are described in its Contingent Application.

Respectfully submitted,

RCA Global Communications, Inc.

By:
/s/ F. J. DeRosa (D. J. Elardo)
F. J. DeRosa
60 Broad Street
New York, New York 10004

/s/ Donald J. Elardo
D. J. Elardo
2030 M Street, N.W.
Washington, D.C. 20036

Dated: August 24, 1976

Its Attorneys

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of GRAPHNET SYSTEMS, INC. Application for Authority to Permit Use of Facsimile Services to Communicate with Terminal Devices Located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom, and West Germany.	File No. I-P-C-11 and I-P-C-11-A

REPLY

Western Union International, Inc. (WUI) hereby submits its Reply to the Opposition by Graphnet Systems, Inc. (Graphnet) in the above-referenced matter. In its Petition to Deny, WUI set forth four basic reasons why Graphnet's Application to extend its present service offering to various European countries should be denied by the Commission:

¶Graphnet's Application is fatally defective for lack of an operating agreement with any foreign carrier.

¶Graphnet has failed to implement the type of domestic telecommunications system described to the Commission in its Initial Application of March 9, 1973 (hereinafter "Initial Application").

¶Graphnet has failed to demonstrate any public need for the proposed extension of its service to Europe.

¶Graphnet's Application is devoid of the critical data required by Section 63.01 of the Commission's Rules and Regulations.

WUI shall demonstrate herein that Graphnet's Opposition fails to rebut or even address itself to any of the issues set forth above. Consequently, the Application should be denied.

II. GRAPHNET'S APPLICATION IS FATALLY DEFECTIVE FOR LACK OF AN OPERATING AGREEMENT WITH ANY FOREIGN CARRIER

In paragraph 6 of its Opposition, Graphnet quotes at length WUI's argument in support of what Graphnet itself admits to be "the Commission's past habit of requiring prior [operating] agreements [with foreign correspondent carriers] in considering IRC applications," (Graphnet Opposition, ¶8). However, Graphnet fails to rebut or even address the compelling reasons advanced by WUI for continuation of sound Commission policy and practice in this area.

However, Graphnet does state what is not at issue: whether Graphnet would be able to negotiate an appropriate operating agreement assuming a grant of the authority requested. Such an abstraction is a patent "straw man" argument, an academic irrelevancy concocted by Graphnet to hide the absence of its substantive rebuttal on this issue.

In any event, none of the existing international record carriers (IRCs) exercise any control whatsoever over foreign correspondent carriers, many of whom are entities of foreign governments.* Therefore WUI is in no position to predict the liklihood of Graphnet successfully concluding an operating agreement with a foreign correspondent carrier.

---

*a de minimis exception might be argued to exist with respect to small number of correspondents having common or related corporate parentage with the IRCs. Such correspondents, however, are rarely, if even, monopoly carriers in their jurisdictions.

However, if Graphnet means to imply that it needs only Commission authorization in order to obtain foreign agreements, that argument is totally inconsistent with its subsequent near-accusation that the IRCs and their correspondent carriers are engaged in a conspiracy, in violation of Federal Antitrust laws, to prevent Graphnet from obtaining the necessary operating agreements:

> "There are close, cordial and long-standing relationships between the IRCs and the foreign telecommunications entities with which Graphnet will be required to deal. And by virtue of those relationships, the IRCs could effectively assure that the agreements said here to be a threshold requirement will never be obtained." (Graphnet Opposition, ¶9)

Apparently recognizing the spurious nature of such a conspiracy charge, Graphnet proceeds to argue that "...even in the absence of any affirmative efforts on the part of the IRCs, it would be naive to assume that foreign correspondents would enter [into] agreements with U.S. entities not yet authorized by the Commission, and risk impairing relations with their existing U.S. partners by seeming to encourage new competition with the IRCs." (Graphnet Opposition, ¶10) In fact, as the Commission has recognized, most foreign correspondent carriers are governmental entities who may be tempted to use their monopoly status to play off the U.S. IRCs against each other. For this reason, the Commission has long recognized the need to prevent foreign correspondent carriers from whipsawing the IRCs into agreeing to settlement rates and division of tolls which would disfavor the American public, as illustrated by the recent case of TRT Telecommunications Corporation, Memorandum Opinion and Order, Transmittal No. 698, Released February 4, 1976:

> "...there is a Commission policy which precludes TRT's attempt to implement a renegotiated settlement rate with the BPO which is lower than the settlement rate existent be tween the BPO and the other U.S. international record carriers. One of the earliest articulations of this policy is found in the Docket No. 6524. The Commission initiated Docket No. 6524 in 1943 after reviewing contractual arrangements between Commission licensees and their foreign correspondents which provided for the division of charges upon varying bases, and after determining that the lack of uniformity with respect to the settlement rates on parallel routes adversely affected the public interest of the United States. The Commission realized that competing carriers on parallel routes may be at an undue competitive disadvantage when dealing with foreign correspondents. Foreign Correspondents can utilize their monopoly status to play one carrier against the other carriers, and thus possibly gain significant concessions and benefits from the U.S. international carriers to the detriment of the American ratepayer." (Paragraph 9, emphasis supplied.)

Moreover, it is simply not the case that "in the absence of a prior Commission authorization, Graphnet's concluding of agreements with foreign correspondents is not a practical possibility." (Graphnet Opposition, ¶9) For example, TRT Telecommunications Corporation (TRT) was, until recently, a regional communications carrier whose business was almost entirely limited to area of Latin America. However, in the past few years, TRT has successfully entered into operating agreements with foreign correspondent carriers in The United Kingdom, Germany, Italy, Republic of the Philippines and Switzerland prior to seeking Commission authorization to provide service to these countries. While WUI argued, and continues to believe, that the Commission erred in granting TRT the respective Section 214 authorizations, it is to be noted that TRT was able to obtain the prior agreement of the respective foreign administrations despite the widely disseminated and well documented opposition of the three existing IRCs which were then operating with those five countries.

Instead of addressing itself to or attempting to rebut WUI's compelling arguments in favor of sound Commission policy in this area, Graphnet, as usual, raises extraneous issues for which it cites no support. For example, Graphnet alleges that:

> "the Commission's past habit of requiring prior [operating] agreements in considering IRC applications....has been...based on its rate-base regulation of IRC charges, and the need to evaluate those long-term cost factors which result from negotiated IRC equity interests in the transmission facilities to be used by them in new proposed services." (Graphnet Opposition, ¶8)

In point of fact, the IRCs often seek authorization to provide service to new points by means of facilities leased from AT&T and Comsat, just as Graphnet proposes herein. The Commission has never indicated that the absence of proposed equity investment in transmission facilities obviates the need to enter into an operating agreement with a foreign correspondent carrier prior to seeking Commission authorization for the proposed new service. For example, TRT in all five countries set forth above proposed to provide its services by means of facilities leased from AT&T and Comsat, and the Commission nevertheless vigorously scrutinized TRT's cost analysis in each case before granting authorization.

In conclusion, it seems clear to WUI, and Graphnet has not denied that: (a) Graphnet's proposed extension of its service to various European countries cannot be implemented without operating agreements with foreign correspondent carriers in each country; (b) the Commission is required by law to certify that any proposed new service to an international point is in the public interest and is economically feasible at the time of its proposed implementation; and (c) Commission processing of and consideration of proposals for new services which cannot be presently implemented for lack of an operating agreement will waste scarce Commission manpower resources for the resolution of what may be academic issues, all to the detriment of the using public. For the preceding reasons, WUI urges the Commission to deny or dismiss Graphnet's Application.

II. GRAPHNET HAS FAILED TO IMPLEMENT THE TYPE OF DOMESTIC TELECOMMUNICATIONS SYSTEM DESCRIBED IN ITS INITIAL APPLICATION

Instead of addressing itself to or attempting to rebut WUI's arguments in this area, Graphnet contends that: (a) "arguments concerning the scope of Graphnet's current domestic authorization are not relevant to the issues here," and (b) "[i]nsofar as this application is concerned, the proposal submitted describes precisely the type of service contemplated....And neither RCA nor WUI claim an inability to understand what the application describes." (Graphnet Opposition, ¶20)

WUI believes that its arguments in this regard are directly relevant to the issues herein because Graphnet is asking the Commission to determine that there is a public need for the service it proposes and yet Graphnet, as WUI has already demonstrated in its Petition to Deny herein, has consistently misled the Commission as to the precise nature of its services and the manner in which those services will be provided. A fully responsive submission in this regard is a prerequisite to any Commission determination that there is a public need for Graphnet's proposed services, whatever they may be.

Moreover, WUI does contend that the instant Application fails "to described the type of service contemplated" (See WUI Petition to Deny, pp. 4-6) and Graphnet has in effect admitted this defect in its Application by failing to address or rebut in its Opposition WUI's arguments in this area. Furthermore, Graphnet has admitted explicitly that it is not now utilizing packet-switching technology by stating that "packet-switching is expected to be implemented within the next 4 months." (Graphnet Opposition [to Petition to Reject Tariff by The Western Union Telegraph Co.], Transmittal No. 20, July 1, 1976, p. 23, emphasis supplied)

III. GRAPHNET HAS FAILED TO DEMONSTRATE ANY PUBLIC NEED FOR THE PROPOSED EXTENSION OF ITS SERVICE TO EUROPE

Graphnet's Opposition contains only the most cursory and abbreviated response to the serious questions raised by WUI (WUI Petition to Deny, pp. 8-9) with respect to the required showing of a public need to extend Graphnet's services to Europe. Graphnet characterizes the skeletal data set forth in Attachment 3 of its instant Application as "as detailed a forecast as is reasonably possible." (Graphnet Opposition, ¶15). The incontrovertible fact, as in the case of Graphnet's Hawaii application, is that Graphnet is either unable or unwilling to provide WUI and the Commission with foundation, facts, bases or methodology upon which to test the accuracy of Graphnet's self-serving "data."

It would seem that Graphnet's sole contention on the issue of public need is that "[i]n its recent Docket No. 20097 decision (¶108), the Commission determined 'not to require...a showing of a special need for service not now available.'" (Graphnet Opposition, ¶17) WUI's response to this argument is fourfold: (a) a Petition to Stay the Commission's Order in Docket No. 20097 insofar as it purports to apply to international communications and the IRCs was filed by WUI on August 16, 1976; (b) a Petition for Reconsideration of Commission's Order in Docket No. 20097 insofar as it purports to apply to the IRCs was filed by WUI on August 25, 1976; (c) a Petition for Review of the Commission's Order in Docket No. 20097 was filed on July 30, 1976 by ITT World Communications Inc. before the United States Court of Appeals for the Second Circuit; and (d) the Commission's Order in Docket No. 20097 contravenes the recent case of _Hawaiian Telephone Company v. F.C.C._,* cited on page 8 of WUI's Petition to Deny herein and which authority Graphnet chose to ignore in its Opposition. The law of the _Hawaiian Telephone_ case, _supra_, and other significant considerations of law and policy, more fully set forth in WUI's Petition to Stay and Petition for Reconsideration cited above and incorporated herein by reference, are grounds for WUI's firm convinction that the Commission's Order in Docket No. 20097 will be overturned insofar as it purports to apply to the IRCs. Therefore Graphnet's reliance upon that Order, to obviate its requirement to demonstrate a public need for its services herein proposed, is misplaced.

---

*498 F. 2d 771 (D.C. Cir., 1974)

IV. GRAPHNET'S APPLICATION IS DEVOID OF THE CRITICAL DATA REQUIRED BY SECTION 63.01 OF THE COMMISSION'S RULES AND REGULATIONS

Graphnet's sole response to WUI's compelling arguments in this area would appear to be that:

> "...WUI and ITT do not dispute the reasonableness of Graphnet's figures, seeming to rely instead on the need for some additional, unspecified data." (Graphnet Opposition, ¶16)

WUI can neither dispute nor confirm the reasonableness of Graphnet's figures for the reason clearly set forth in WUI's Petition to Deny (pp. 9-10) and totally unrebutted by Graphnet in its Opposition, that:

> "...the Commission has no basis upon which to evaluate Graphnet's unsupported predictions of traffic and future growth, [for which reason] the cost and revenue information set forth in Attachment 2 (as amended) of Graphnet's application is completely meaningless....[as a result of which] the Commission has absolutely no basis upon which to evaluate the economic viability of Graphnet's proposed extension of its services to Europe. Accordingly, the instant Application should be denied."

Graphnet concludes its Opposition with the observation that:

> "...the fundamental objection [of the IRCs] is a narrow one--that the absence of completed agreements between Graphnet and foreign correspondent entities renders inappropriate any further Commission consideration of Graphnet's application." (¶22)

While it is certainly true, as set forth in Section I hereof, that WUI does contend that the absence of even an agreement in principal, let alone an executed operating agreement, with any foreign correspondent carrier is a fatal defect in Graphnet's Application, WUI also contends that there are additional serious defects in Graphnet's Application, as set forth in Sections II, III, and IV, above, for all of which reasons, Graphnet's instant Application should be denied.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: William R. Horner
Its Attorney

One WUI Plaza
New York, New York 10004

Dated: August 27, 1976

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

ROBERT MICHELSON
Attorney

Telephone: (21[illegible] [illegible]3-5812

September 24, 1976

Mr. Vincent J. Mullins, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Telenet Communications Corporation
(Telenet) - File No. I-T-C-2634

Dear Mr. Mullins:

In its July 23, 1976 Petition to Deny the above-referenced application, Western Union International, Inc. (WUI) stated that:

(i) The requirements of all U.S. subscribers, including Telenet's customers, to access overseas databases and remote computing facilities, could best be met by WUI, an established international carrier; and

(ii) WUI was ready, willing and able to provide such international access to all U.S. subscribers, and to that end had been negotiating with the United Kingdom Post Office (UKPO) and various foreign administrations.

The purpose of this letter is to inform you, as well as the parties of record in the matter above-referenced, that WUI has today filed with the Commission an amendment to its Tariff F.C.C. No. 11, Overseas Datel Service, for the provision of Database Service (DBS) between the United States and the United Kingdom. WUI and the UKPO have agreed to furnish the service for an experimental period of twelve (12) months in order to meet the needs for an overseas database access and remote computing service. This enhancement of our present Overseas Datel Service will provide WUI, the UKPO and other interested overseas administrations, with market information which will be useful in the development of follow-on data transfer services. DBS, as offered by WUI and the UKPO, provides high quality, low priced international data transmission to enable customers, such as those noted by Telenet in its application, to access overseas databases and remote computing facilities. Hence, the major justification for Telenet's above-referenced application, a purported need for an offering specially designed and priced for such customers, is now moot.

WUI has arranged with Tymnet, Inc. to make DBS available to the 10,000 Tymnet subscribers in more than 60 U.S. cities. Arrangements have also been made for access through DBS to such major on-line information retrieval services as the government-based National Library of Medicine's "Medline" service and commercial services such as Lockheed's "Dialog" and System Development Corporation's "Orbit and Databasics".

While the above-mentioned access to Tymnet, Inc. subscribers will make DBS available to many current Telenet subscribers (since a number of the Telenet subscribers are also linked to Tymnet), WUI has also offered to interconnect DBS with Telenet's domestic network (see attached letter from R. P. Romanelli to Dr. Lawrence G. Roberts). Unlike the unilateral overseas expansion sought by Telenet on behalf of its own customers in the above-referenced application, the joint WUI/UKPO offering affords efficient international access to all domestic data networks within the U.S. and is therefore best able to meet the needs of all existing and emerging communications users.

Respectfully submitted,

Robert Michelson
Robert Michelson

cc: Donald E. Ward, Esq. (Telenet)
Philip Walker, Esq. (Telenet)
Francis J. DeRosa, Esq. (RCA)
Theodore J. Fishkin, Esq. (ITT)
Roderick A. Mette, Esq. (TRT)

WUI | Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

ROBERT MICHELSON
Attorney

Telephone: (212) 363-5812

October 1, 1976

Mr. Vincent J. Mullins, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Western Union International, Inc.
Transmittal No. 1073

Dear Mr. Mullins:

On September 24, 1976, pursuant to Transmittal No. 1073, Western Union International, Inc. (WUI) issued amendments to its Tariff F.C.C. No. 11 (Overseas Datel Service) effective December 22, 1976 to provide overseas access to and from database computers and remote computing services between the United States and the United Kingdom (denominated "Database Service" or "DBS").*

Within hours of filing the foregoing amendments to its Overseas Datel Service, however, WUI was advised informally by members of the Commission staff that while WUI's proposed tariff revisions had not yet been evaluated, there was a significant likelihood that introduction of DBS would require additional authority pursuant to Section 214 of the Communications Act unless the proposed tariff revisions were of a minor nature. It was noted by the staff that RCA Global Communications, Inc. (RCA) had only that day been advised that its proposed revisions to RCA Tariff F.C.C. No. 79 to establish a new class of Datel Service (denominated "Datel-II") would require additional Section 214 authority.

---

* In its Transmittal No. 1073, WUI advised the Commission that both WUI and the United Kingdom Post Office (UKPO) were receiving customer requests for prompt initiation of DBS and for that reason WUI would shortly submit to the Commission an application for special permission to advance the effective date so that DBS may commence no later than December 1, 1976. A copy of WUI's Transmittal, tariff filing, and supporting data is annexed hereto for information and convenience.

The purpose of this letter is to place before the Commission those overriding legal and public interest considerations which conclusively demonstrate that additional Section 214 authority is unnecessary for the timely commencement of DBS.

Sufficient Section 214 authority already exists.

Enhancements of existing tariffed services (DBS is such an enhancement of traditional Datel service) do not require separate piecemeal Section 214 authority but are appropriately included within the broad description of services that WUI was authorized to provide in 1964.* That authority encompasses

> "telegraph message service; telex service; leased telegraph channel service; facsimile (including photo) and data and program transmission services, including voice for cue and contact control; any other record service; leased circuits for alternate voice-record use; and leased circuits for alternate and simultaneous voice and non-voice use by defence agencies of the United States Government".

DBS consists of furnishing customers access, at operating speeds of from 110 to 1200 bits per second, to and from database computers and to and from dataprocessing computers for remote computing. There is no voice use associated with DBS, even for purposes of cue and contact control, although access is available via the MTS network. Such data transmission incontestably falls within the above quoted categories of "facsimile (including photo) and data and program transmission services" and "any other record service". WUI submits that the foregoing language is clear and unequivocal and constitutes requisite authority for the service enhancement agreed to by WUI and the UKPO.

DBS is to be provided over previously authorized facilities.

No new communications facilities need be activated for the timely commencement of DBS. Such service is to be provided over existing facilities for which Section 214 authorization has heretofore been sought by WUI and granted by the Commission.

---

* Order and Authorization, File No. I-T-C1739 et al, April 8, 1964.

The Commission has previously affirmed that new services may be provided by a tariff filing where a carrier has facilities in place.

The Commission itself has recently confirmed that in circumstances such as exist here, new services may be available by means of a tariff filing. Thus, in its submission to the Second Circuit Court of Appeals, the Commission has stated that:

> "[o]rdinarily, a carrier which has facilities in place that are capable of providing new services may offer the new service merely by filing a tariff. 47 U.S.C. §203".*

WUI submits that here again, as is the case of WUI's 1964 "franchise" authorization in File No. I-T-C-1739 *et al* noted above, the clear and unambiguous meaning -- in *fact*, the only possible interpretation -- of the Commission's own words is that WUI may provide DBS by means of a tariff filing.**

---

* *ITT World Communications Inc. v. FCC*, U.S.C.A. (2nd Circuit) Docket No. 76-4049, 4061, 4074; Respondents' Brief at page 8.

** Of course, the "statutory scheme" reflected in Sections 203-05 of the Communications Act grants the Commission authority to reject tariffs or revisions thereof (within narrowly circumscribed limits not applicable here) or to suspend the operation of such tariffs or revisions for a statutorily limited period and to conduct a hearing as to their lawfulness. *American Telephone and Telegraph Co. v. FCC*, 487 F. 2d 865, 875 (2d Cir. 1973); *See also* *Associated Press v. FCC*, 448 F. 2d 1095, 1103 (D.C. Cir. 1971).

Analysis of its service characteristics confirms that DBS is appropriately a class of traditional Datel service.

An examination of the principal service characteristics common to DBS and traditional datel service demonstrates that DBS is properly a class or subcategory of Datel:

(a) each provides for the two-way transmission of data signals;

(b) each is a "short period" or "demand" service, as opposed to a full time service;

(c) each is an "exchange" or "switched" service, as opposed to a "dedicated" service;

(d) each is available to a broad base of communications users;

(e) each offers transmission speeds up to 1200 bits per second;

(f) access for each is provided to WUI's facilities on a direct basis as well as a dial-up basis via the MTS network.

In contrast to the above pervasive commonality of service, the principal distinctions between DBS and traditional Datel involve their respective rate structures and internal operational techniques. In fact, DBS provides heretofore unavailable economies for subscribers whose requirements for short intermittent bursts of data are ill-suited to the existing Datel tariff structure. DBS seeks to test this developing computer communications market by means of a rate reduction, a tariff procedure previously approved by the Commission to test the "off-peak" U.S./U.K. telex market (Memorandum Opinion and Order of June 6, 1975; FCC 75-655). From the standpoint of service features perceived by the customer, the only other significant distinction between DBS and Datel is that DBS does not encompass voice service at all, whereas Datel includes limited voice for coordination purposes.

The Commission has already been provided with all information and supporting data required of a Section 214 application.

WUI's instant tariff filing was accompanied by extensive and comprehensive supporting material pursuant to Section 61.38 of the Commission's Rules. In addition WUI has provided the Commission with a thorough operational and functional description of its proposed DBS together with a pursuasive showing of the urgent public requirement for the service. Under the circumstances (WUI's use of previously authorized facilities) this detailed submission of explanatory and supporting information provides effective and substantial compliance with the requirements of Sections 63.01 and 63.04 of the Commission's Rules.

WUI notes that in the past the Commission has interpreted such requirements as a flexible regulatory tool rather than immutable and essential preconditions to authority. Thus, the Commission has acknowledged that it would "maintain regulatory flexibility at the outset to encourage innovation and competitive costs and charges".* Such flexibility is particularly appropriate in the instant case where WUI and its correspondent have identified a specific and developing customer demand and have further agreed to meet that demand within the context of a limited, experimental offering which seeks, inter alia, to obtain market and operating experience that will be invaluable in the further development of newly emerging communications requirements to overseas databases and remote computing facilities.

In light of the foregoing considerations WUI submits that the Commission's regulatory standard of furthering the present or future public convenience and necessity can readily be met by an evaluation of the information now before it in the context of the instant tariff filing. To insist upon the procedural distinction of a Section 214 application, with the open-ended uncertainty and delays attendant thereto, is to elevate form over substance to the great disadvantage of the communications customer.

---

* American Satellite Corp., 55 F.C.C. 2d 1 (1975); Southern Pacific Communications Co., Memorandum Opinion and Order, (FCC 76-578) June 24, 1976.

In addition to the foregoing considerations in support of WUI's tariff filing herein, WUI submits that prolonged postponement of the introduction of DBS will adversely affect (i) the interests of international comity; (ii) the timely development and introduction of innovative data services in response to ever-evolving customer demands; and (iii) the ability of United States carriers to adequately influence the direction and nature of such services. The likely result of imposing a Section 214 requirement herein would be the postponement, for perhaps a year or more, of a joint WUI/UKPO experiment to gather necessary operating and marketing information to facilitate the orderly development of future computer communications services. At the same time, DBS is expected to satisfy an existing unmet communications requirement, identified by WUI and the UKPO. Failure to share in such developmental, innovative services will only relegate United States carriers and their communications users to a passive role, allowing the crucial field of computer communications to evolve without adequate United States input or influence. Such an inactive and dependent role is unacceptable to WUI, to the customers we have pledged to serve, and, we are certain, unacceptable to the Commission as well. The Commission should actively encourage, not inhibit, U.S. carriers to assume leadership positions in the development of new and innovative data services in order to guide the development of such services in a direction most favorable to the U.S. communications user.

Notwithstanding all the foregoing, should the Commission determine that additional authority is required, WUI hereby requests such temporary authority, pursuant to Section 214 of the Communications Act and Section 63.04 of the Commission's Rules and Regulations, as may be required to use its previously authorized facilities for the provision of WUI's Database Service, to be provided jointly with the UKPO for an experimental period of one year commencing on or before December 1, 1976. In such event, WUI would promptly prepare and file a formal Section 214 application for appropriate authority. To the extent that any provisions of Sections 63.01 or 63.04 of the Commission's Rules are deemed applicable and are not fully complied with or addressed in WUI's instant tariff filing and detailed supporting data, WUI respectfully requests an appropriate waiver thereof.

All carriers required to be notified by the Commission's letter of August 30, 1973 have been served with a copy of this letter together with all attachments hereto.

Respectfully submitted,

Robert Michelson

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
(202) 296-1600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS N. FROHOCK
CARL R. RAMEY
EDWARD P. TAPTICH
PETER M. ANDERSEN
NORMAN P. LEVENTHAL
JAMES R. COOKE
STEVEN A. LERMAN
VIRGINIA S. CARSON
JOHN J. SMITH

October 15, 1976

Vincent J. Mullins
Secretary
Federal Communications Commission
Washington, D. C. 20554

Re: FCC File Nos. I-P-C-11, I-P-C-11A

Dear Mr. Mullins:

On February 18, 1976, the referenced application was filed by Graphnet Systems, Inc., seeking appropriate authority to permit communications by Graphnet subscribers with addressee facsimile communications in 11 Western European countries. Public Notice of the application's acceptance for filing was issued June 10, 1976. Thereafter, pleadings directed to the application were filed by the United States international record carriers, including Western Union International, Inc. ("WUI"). The pleading process concerning the application has been concluded, and in the absence of requests for further information by the Commission, the matter is ripe for decision.

By letter dated October 1, 1976, WUI, among other things, requested that it be granted temporary Section 214 authority to provide a new "Database Service," pending its filing of, and Commission action on, a formal Section 214 application for such authority. Simultaneously herewith, Graphnet has filed a Petition to Deny that WUI request. In that petition, Graphnet set forth in detail its view, not only that WUI's request for Section 214 authority should not be handled in a summary fashion, but that a peremptory grant of authority to WUI would represent an unfair favoring of WUI over such entities as Graphnet, whose referenced application to provide similar services is pending.

Should the Commission nonetheless grant WUI's October 1, 1976, request for temporary authority, Graphnet hereby requests that it also be granted temporary authority (pursuant to Section 214 of the Communications Act and to Section 63.04 of the Commission's Rules) to provide the services described in its referenced application, pending final Commission action on that application. In its filings to date, Graphnet has provided the Commission with a complete description of the services proposed, together with a persuasive showing of the urgent public requirement for those services. Indeed, none of the objecting IRCs contested the public interest showing advanced, content instead to rely on narrow procedural arguments. To that extent -- and certainly more so than WUI's tariff-related filings -- Graphnet's submissions provide effective and substantial compliance with the requirements of Sections 63.01 and 63.04 of the Commission's Rules.

Moreover, the overall bases advanced by WUI in support of its temporary authority request (WUI letter, pp. 5-6) are equally applicable to Graphnet's proposal. As WUI has put it, in words particularly apt here (id. at 6):

> The Commission should actively encourage, not inhibit, U.S. carriers to assume leadership positions in the development of new and innovative data services in order to guide the development of such services in a direction most favorable to the U.S. communications user.

Notwithstanding substantial Western Union efforts to frustrate Graphnet's growth, Graphnet has already developed and marketed new and innovative services within the United States, in response to users' heretofore unsatisfied needs and demands. The referenced application seeks to extend the availability of those services internationally -- "in order to guide the development of such services in a direction most favorable to the U.S. communications user."

To the extent that any provisions of Sections 63.01 or 63.04 of the Commission's Rules are deemed applicable and are not fully complied with or addressed in Graphnet's referenced application materials, Graphnet requests an appropriate waiver thereof.

A copy of this request has been furnished all parties which filed pleadings addressed to the referenced Graphnet application.

Respectfully submitted,

Edward P. Taptich

Edward P. Taptich

Counsel for Graphnet Systems, Inc.

cc: Joseph J. Jacobs, Esq.
William R. Horner, Esq.
Donald J. Elardo, Esq.
Roderick A. Mette, Esq.

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	)
	)
WESTERN UNION INTERNATIONAL, INC.	)
	)
Application for Temporary Authority, Pursuant to Section 214 of the Communications Act and Section 63.04 Of the Commission's Rules	))))

To: Chief, Common Carrier Bureau

PETITION TO DENY

Graphnet Systems, Inc. (hereinafter "Graphnet"), by its attorneys, hereby requests that the informal request by Western Union International, Inc. (hereinafter "WUI"), for temporary Section 214 certificate authority, filed October 1, 1976, be denied.[1/] In support of this request, the following is submitted:

Preliminary Statement

1. On September 24, 1976, WUI filed certain tariff revisions, proposing to establish a new "Database Service"

[1/] Not having been served by WUI, Graphnet first became aware of WUI's request for temporary authority on October 6, 1976, and a copy of the request was obtained on October 7, 1976. Because of the highly limited opportunity to review and analyze the proposal in that context, the comments herein are both preliminary and limited. Graphnet specifically reserves its right to submit such further or additional comments as may appear appropriate.

(hereinafter "DBS"). . The service was described as "an enhanced version of Datel Service whereby access will be provided for communications to and from database computers and remote computing services between the United States and the United Kingdom." (Transmittal No. 1073, p. 1.) WUI's transmittal letter indicated that the service offering reflected an agreement WUI had reached with the United Kingdom Post Office (hereinafter "UKPO"). Neither a copy nor the details of that agreement were filed. In the supporting materials accompanying the tariff revisions, it was disclosed that the service was based as well on an "arrangement" with Tymnet, Inc.[2/] While neither a copy nor the details of that "arrangement" were filed, the financial porjections submitted reflected annual "payouts" to Tymnet of from $37,500 to $101,980. (Attachment III, pp. 2, 5, 7.)

[2/] On May 13, 1976, Tymnet, Inc., filed an application for Section 214 authority "to operate, as an interstate common carrier, a 'value-added' communications network. Services to be offered include the establishment of direct, virtual connections between origination and destination stations providing highly reliable, low-cost connections from terminal to/from computer, computer-to-computer and, through store-and-forward techniques, terminal-to-terminal communications." (Tymnet App., p. 1.) Tymnet's parent, Tymshare, Inc., is "a computer services company which provides a wide variety of computer data processing services, utilizing its own computer hardware and software systems." (*Id.* at 6-7.) Since 1972, Tymshare has operated a joint use network termed "national data communications facilities" by Tymnet (*id.* at 10), and in Telenet pleadings during the past year, a communications common carrier network. In establishing its proposed network, Tymnet will acquire certain "components" which "have been utilized in [the] private, shared network . . . [of] Tymnet's parent organization, Tymshare, Inc." (*Id.* at 2.)

2. As filed, the tariff revisions were to become effective December 22, 1976. However, WUI stated that it would "shortly submit to the Commission an application for special permission to advance the effective date so that service may commence no later than December 1, 1976." (Transmittal No. 1073, p. 2.)

3. On October 1, 1976, WUI filed a letter with the Commission, stating that it had been advised by the Commission's Staff that "there was a significant likelihood that introduction of DBS would require additional authority pursuant to Section 214 of the Communications Act." WUI contended, however, that its current certificate authorization already permitted the tariff offering proposed. Alternatively, WUI argued that if additional Section 214 authority was in fact required, the Commission should summarily grant such authority on a temporary basis, based on the information submitted with the earlier tariff filing.

Summary of Graphnet's Position

4. To the extent WUI may require certificate authority to provide the services reflected in its Transmittal No. 1073 tariff revisions, it seeks that authority in a fashion purposely designed to avoid public scrutiny. Having itself sought to employ the usual Section 214 procedures to obstruct even a consideration of proposals by Telenet and Graphnet to provide new and innovative international record and data communications services, WUI here asks that it be exempt from those procedures.

5. The Commission should have no part of WUI's backdoor approach. Important issues are raised by WUI's proposal, even on the basis of a preliminary review. While the proposal is said to be based on agreements with the UKPO and Tymnet, the precise nature of those agreements -- a knowledge of which is essential to any informed public interest judgment -- has not been disclosed. Questions of the consistency of the proposal with the Commission's Computer Inquiry, Resale and International Gateway policies are evident. And the non-discriminatory availability of the proposed services, involving ancillary questions of competitive impact on other providers of the same or similar services, is entirely uncertain.

6. WUI would have the Commission ignore the existence of any questions at this time, and blindly favor WUI with an immediate authorization. There is no reason, however, why the Commission or the Bureau should be stampeded into summarily deciding far-reaching issues -- or acting in a fashion which will impair its future decisional flexibility -- merely for WUI's competitive convenience. Indeed, there is even less justification for bartering away the public's entitlements to know about, and to comment on, WUI's proposal prior to Commission action.

7. Graphnet does not contend at this point that an ultimate grant of some form of certificate authority to WUI may not be appropriate. There is insufficient information currently available, and there has not been adequate time for evaluation,

to permit Graphnet to reach any final conclusions in that regard. What Graphnet does contend is that WUI's request for a summary grant of Section 214 authority should be denied. The WUI proposal should be placed on public notice, and the matter considered in the normal procedural context -- one which permits both public comment and reasoned Commission analysis.

Argument

A. The Threshold Issue Requiring Resolution Is Whether Additional Section 214 Authority Is Required.

8. In considering WUI's request for temporary authorization, the initial determination to be made, of course, is whether WUI's current certificate already contemplates the services involved. For an affirmative answer to that question would obviously moot the need for additional authority, temporary or permanent. From WUI's October 1st letter, it appears that the Commission's Staff has already advised WUI that additional Section 214 authority may be required. And the principal thrust of WUI's letter is to contest the need for any additional certificate authority.

9. Graphnet takes no direct position at this time on WUI's need for such authority. As indicated in the discussion to follow, however, it appears clear that more information is needed before any prudent decision can be made in that regard. WUI itself recognizes that a resolution of the authority issue depends, in

significant part, on the extent to which the proposed services differ from those WUI currently provides. (WUI letter, p. 4.) And WUI asserts summarily that "the principal distinctions between DBS and traditional Datel involve their respective rate structures and internal operational techniques." (Ibid.) But the proposed service is said to be based on agreements between WUI, on the one hand, and the UKPO and Tymnet on the other -- agreements which have not yet been disclosed. And until the Commission knows precisely what those agreements contain, an informed judgment on the Section 214 question cannot be made. It would appear, therefore, that WUI's submission of the agreements involved is an essential prerequisite to the Commission's resolving this issue. Moreover, to the extent the authority question rests on a construction of WUI's existing certificate, consistency with the Bureau's restrictive approach to interpreting Graphnet's authorization in connection with Graphnet's Transmittal No. 18 and 20 tariff filings seems equally required.

B. If Section 214 Authority Is Required, WUI's Application Should Be Evaluated In Accord With Normal Statutory Requirements, And With A Full Opportunity For Public Comment.

10. If it is determined that WUI requires additional Section 214 authority to provide the DBS service, the question then to be determined is what procedures should be employed in considering whether such authority should be granted. The Commission's Rules, Sections 63.01 *et seq.*, reflecting statutory

requirements, spell out the usual procedures. In the normal course, an application, containing the information called for by Section 63.01 of the Rules, must be filed, the filing of the application is made the subject of a Public Notice, and interested parties are afforded at least 30 days within which to file comments.

11. In its October 1st letter, however, WUI asks that the usual procedures be ignored, and that it be summarily granted such authority as may be required, based on the information submitted with its September 24th tariff filing.[3/] If the Commission accedes to that request, WUI then "would promptly prepare and file a formal Section 214 application for appropriate authority." (WUI letter, p. 6.) In other words, WUI would have the Commission first grant the authority requested, but reserve until later a judgment whether the grant was in the public interest. In Graphnet's view, the approach urged by WUI is entirely inappropriate.

[3/] WUI repeatedly refers to its proposal as an "experimental" offering in attempting to make a grant of temporary authority appear more appropriate. However, it is readily evident that WUI's is no short-term, temporary proposal. Since the agreements with UKPO and Tymnet have not been disclosed, of course, the terms of those relationships are not known. But even the initial transmittal letter (p. 2) stated WUI's expectation "that the service will probably be continued beyond that date." The financial projections submitted cover a full three-year period. And WUI intends to seek "further agreements with additional overseas countries during the experimental period." (WUI tariff supporting material, Attachment 2, p. 4.)

While the proposed tariff is for a year's period, of course, Section 63.04 of the Rules permits temporary service authorizations for only a six-month period.

12. First, viewed as an application for authority, WUI's filings are importantly incomplete and do not, in the circumstances here involved, provide "effective and substantial compliance with the requirements of Sections 63.01 and 63.04 of the Commission's Rules," as WUI asserts. (WUI letter, p. 5.) Most conspicuously, while WUI indicates that it has reached some form of agreement with both the UKPO and Tymnet, it has neither submitted those agreements, nor detailed their provisions. Where such agreements exist, applications for international authority typically include them. Indeed, in opposing Graphnet's overseas application, WUI itself asserted that the failure to submit such agreements is an absolute bar to any serious consideration of such applications for international authorization.[4/]

13. Second, the proposal is unclear in a variety of respects which must be fully understood before any informed public interest judgment can be made. For example, entirely unclear -- but critically important -- is the proposed relationship between WUI and Tymnet. In its only direct statement on that matter, WUI states in its tariff materials (Attachment 2, p. 1)

[4/] See, e.g., File No. I-P-C-11, WUI "Reply," filed August 27, 1976, p. 11:

> [I]t is certainly true . . . that WUI does contend that the absence of even an agreement in principal [sic], let alone an executed operating agreement, with any foreign correspondent carrier is a fatal defect in Graphnet's application. . . .

that it "has arranged with Tymnet, Inc., to make the overseas [DBS] service available to the 10,000 subscribers of Tymnet's U.S. network . . . and the various databases and remote computing facilities served via Tymnet." That enigmatic assertion, however, does not make clear whether WUI intends to deal with Tymnet as a carrier or as a data processing entity. There are some indications that the agreement between WUI and Tymnet is of a carrier-to-carrier interconnection sort. And WUI's financial projections show "payouts" to Tymnet[5/] -- possibly a type of settlement arrangement for the joint provision of through communication service.[6/] But while Tymnet has applied for common carrier authority (see note 2, above), Tymnet is not yet an authorized carrier. Thus, if WUI's arrangement contemplates Tymnet's participation in the joint provision of through communications services, the absence of Tymnet's having an appropriate certificate stands as an absolute bar to approving WUI's proposal.

14. If, on the other hand, WUI's agreement contemplates dealing with Tymnet as a data processing vendor, equally significant issues are raised. What, in that context, are the "payouts" to Tymnet for? Certainly a form of rebate for Tymnet's funneling

---

[5/] See WUI's tariff supporting material, Attachment III, pp. 2, 5, 7.

[6/] Even this matter is unclear, however. For WUI refers only to a division of rates "between WUI and the UKPO." (WUI tariff supporting material, Attachment 2, p. 2.)

its customers' traffic to WUI would raise serious questions. If the "payouts" are for some form of data processing services, or if they represent WUI's joint participation in a form of data processing services, the consistency of such an arrangement with the Computer Inquiry's maximum separation requirements is immediately called into question. Moreover, if the "payouts" are essentially a compensation for WUI hinterland customers'[7/] use of a Tymnet data processing network to reach WUI gateway facilities, or for the forwarding of inbound traffic from WUI's gateway to the hinterland, the Commission's "free direct access" ruling in Docket No. 19660, 40 F.C.C.2d 1082 (1973), appears to preclude that type of arrangement.[8/]

15. Another critical question raised by WUI's proposal is whether the offering, whatever its actual dimension, will in fact be available on a non-discriminatory basis. For even reading the entirety of WUI's materials, it is unclear who will be able to utilize the service. Attachment 2 to the tariff filing appears to limit use of the service outbound ~~to~~ Tymnet subscribers, and inbound to those overseas users desiring to access "various

---

[7/] See the definition of "Database Computer" in WUI's proposed tariff, p. 5, where it appears that Tymnet's subscriber must also be a customer of WUI.

[8/] Pertinent in this regard, perhaps, is WUI's statement that revenues will be divided between WUI and the UKPO, "with each party absorbing its pay-outs and costs out of its share of the divided revenue." WUI tariff supporting material, Attachment 2, p. 2.

databases and remote computing facilities served via Tymnet." (Emphasis added.)[9] Moreover, the service description is based entirely on a WUI-Tymnet arrangement. Elsewhere, WUI does refer generally to being prepared to enter similar arrangements with Telenet and with "other U.S. networks and other databases and remote computing facilities."[10] And the proposed tariff (Section 2.022) states that DBS service will be available "by prior arrangement." But nowhere are the necessary "prior arrangements" spelled out. Moreover, there is no assurance whatever at this point that such facilities configurations as may be required for the WUI/Tymnet arrangement will not preclude, as an operational matter, use of the WUI service by other entities.

16. Aside from determining the consistency of the proposal with the Docket No. 20097 policies, the Commission has an obligation to assure that WUI's proposed services will be available to all similarly situated entities, including Graphnet. Based on the currently filed materials, there is no basis for such a conclusion at this point. And until such an assurance is established -- until it is clear that Graphnet, as well as other resale (value-added) carriers will not be foreclosed from obtaining a

---

[9] WUI tariff supporting material, Attachment 2, p. 1. WUI's projections are based only on Tymnet's experience. See WUI tariff supporting material, Attachment 2, p. 3.

[10] WUI tariff supporting material, Attachment 2, p. 1. See also id. at Attachment III, p. 2, note.

like arrangement on the same basic terms -- the authority requested cannot properly be granted.

17. From the foregoing, it is evident that important issues are raised by WUI's proposal. And those issues should not be decided in a cavalier manner, simply to serve WUI's convenience. Graphnet has had less than 8 days to attempt an evaluation of the proposal -- far less than the questions involved require. And the public generally -- among which are many entities which will be vitally affected by the action taken -- has had neither notice of the filing nor a fair opportunity to be heard. WUI contends, of course, that usual application procedures should not be followed because of "the open-ended uncertainty and delays attendant thereto." (WUI letter, p. 5.) Moreover, it is said that a "prolonged postponement of the introduction of DBS will adversely affect (i) the interests of international comity; (ii) the timely development and introduction of innovative data services in response to ever-evolving customer demands; and (iii) the ability of United States carriers to adequately influence the direction and nature of such services." (Id. at 6.)

18. In Graphnet's view, WUI's contentions are so much disingenuous flag-waving, designed only to mask WUI's immediate competitive goals. While WUI sermonizes that the Commission "should actively encourage, not inhibit, U.S. carriers to assume leadership positions in the development of new and innovative data services," WUI is in the forefront of those who have obstructed the implementation of just such services by others. Among other things,

WUI has loudly protested the recent overseas proposals of both Graphnet and Telenet. Having thus stalled action on others' efforts to provide new and innovative services, WUI now urges an immediate grant to itself. That such an approach may serve WUI's interests seems clear. What is equally clear, however, is such an action, by foreclosing any meaningful consideration of the serious issues raised by the proposal, would not serve the public interest.

19. It should also be emphasized that an endorsement of WUI's approach would carry with it a corollary requirement that the Commission also summarily authorize similar services proposed by other carriers. Both Graphnet and Telenet have applications for authority to serve overseas points currently pending before the Commission. To the extent the services proposed by WUI are similar to, or would be competitive with, those proposed by Graphnet and Telenet, summarily authorizing WUI, while withholding action on the Graphnet and Telenet proposals, would represent both a regrettable and an improper procedural favoring of WUI.

20. To obviate that possible consequence, Graphnet is separately requesting temporary authority to provide the service it has proposed in its pending Western European application. Unlike the WUI circumstance here, Graphnet's formal application has been on file with the Commission for 8 months, has appeared on Public Notice, has been the subject of public scrutiny and comment, and the matter is ripe for action. In Graphnet's view, a grant of

WUI's request here, without a concurrent grant of Graphnet's request, would represent a clear abuse of discretion. Moreover, Graphnet submits that, if WUI's request for temporary authority is denied, any ensuing formal Section 214 application by WUI is entitled to no greater processing preference or expedition than that afforded Graphnet or Telenet.

C. If Section 214 Authority Is Not Required, There Should Be No Abbreviation Of The Time For Public Comment On WUI's Transmittal No. 1073 Tariff Revisions.

21. WUI's September 24, 1976, Transmittal No. 1073 tariff revisions bear an effective date of December 22, 1976, In WUI's transmittal letter, however, it is said that WUI "will shortly submit an application for special permission to advance the effective date so that service may commence no later than December 1, 1976." Such an acceleration of the effective date would, of course, correspondingly abbreviate the time within which interested parties can evaluate the tariffs and submit appropriate comments.

22. In Graphnet's view, such a limitation would be wholly inappropriate, in light of the significant questions raised by the proposed tariffs, irrespective of the issues relating to the need for Section 214 authority. Whether the tariff provisions are consistent with existing Computer Inquiry allowances, and with the policies announced in Docket No. 20097, are readily apparent questions. Whether the proposed service properly will

be available on a non-discriminatory basis is yet uncertain. Moreover, given WUI's statement "that DBS is properly a class or subcategory of Datel," and in light of the fact that WUI's projections indicate revenue requirements for the service to exceed projected revenues, there is a further question whether the tariff represents improper cross-subsidization within the Datel services. Compare, e.g., Wide Area Data Service, 35 F.C.C. 149, 183 (1963); Wide Area Telephone Service, 37 F.C.C. 688 (1972).[11/] In addition, there is a yet-to-be-cost-justified disparity, for example, between the $4.00/minute charge for "data station service" and the $.17 to $.35/minute charge which the proposed DBS rates represent.

23. Under both the Commission's Rules and the newly-enacted P.L. 94-376, WUI would bear the burden of justifying a grant of special permission to file the tariffs on less than 90 days' notice. In light of the questions raised by the tariffs, it is difficult to anticipate what reasons could appropriately be offered by WUI to justify abbreviating the Commission's opportunity fully to evaluate and dispose of such questions. Given the present procedural circumstances, however, what is at least clear is

---

[11/] See also the observation in the Docket No. 18128 Recommended Decision (¶95):

> [T]he Commission has held that . . . the public interest is not generally served . . . by cross-subsidization of one subclass of service by any other sub-class within the same class of service. . . .

that any requests by WUI for special permission should be served on Graphnet and any other interested party. And no unilateral affirmative action on such a request can now properly be taken before such parties have had a reasonable opportunity to be heard.

Conclusion and Recommendations

24. As the foregoing demonstrates, the WUI proposal raises a variety of serious and substantial questions. And if it is determined that WUI requires additional Section 214 authority to provide the services proposed, those questions should not be resolved on a summary basis, in the absence of further information, or without the benefit of public comment. The appropriate and, Graphnet submits, required procedural course at this point is as follows:

(a) WUI should be directed immediately to file its agreements with the UKPO and Tymnet;

(b) Based on those and any other materials necessary to a clear understanding of the proposed services, a determination should then be made whether WUI requires further Section 214 authority for their provision;

(c) If it is determined that further Section 214 authority is required, the request for temporary authority should be denied, and the September 24, 1976, tariff filing should be rejected as exceeding WUI's current authority;

(d) WUI's October 1, 1976, filing should be treated as a formal application for Section 214 authority, public notice of the filing should be given, and the usual opportunity for public comment should be extended.

To proceed otherwise, Graphnet submits, would be to subvert the clear purposes of Section 214 of the Act in favor of WUI's competitive interests.

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

By Edward P. Taptich
Edward P. Taptich

McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

Its Attorneys

October 15, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re

WESTERN UNION INTERNATIONAL, INC.

and

WESTERN UNION INTERNATIONAL, INC.

Letter Request of October 1,
1976 for "Temporary Authority"
to Offer "Database Service"
(DBS) to the United Kingdom

Transmittal No. 1073
of September 24, 1973

File No.

To: The Commission[1]

PETITION TO REJECT AND DENY

Telenet Communications Corporation (hereinafter Telenet), hereby petitions the Commission to (a) reject Western Union International's (WUI) Transmittal No. 1073 purporting to amend its Tariff F.C.C. No. 11 to offer a new "Database Service" (DBS) to the United Kingdom, as beyond the scope of its existing authority; and (b) deny WUI's October 1, 1976 letter request for temporary authority, pursuant to Section 63.04 of the Rules, to offer DBS pending its filing of a formal Section 214 application therefor.

---

[1] It is recognized that the Chief of the Common Carrier Bureau has the delegated authority to reject tariffs. However, due to the fact that both of these matters arise out of a single set of circumstances - WUI's desire to institute DBS on some basis -- it is believed that the Commission may wish to consider the issues in a unitary manner, rather than piece-meal.

I. Preliminary Statement

Telenet is a certificated common carrrier offering a public packet-switched data communications service throughout the contiguous forty-eight states and to Canada. Telenet's application to extend its service to the United Kingdom and points behond (File No. I-T-C-2634) was filed on May 4, 1976, pursuant to Section 214 of the Communications Act. WUI, among other carriers, has petitioned the Commission to deny Telenet's application, asserting, inter alia, that "WUI can better meet the public needs" and that "international packet switching is premature". The final stage of pleadings concerning Telenet's application was filed August 27, 1976, and thus that application is ripe for determination.

Although WUI obviously perceives the relevance of its DBS proposal to Telenet's application[2/] it failed to serve Telenet with a copy of its October 1 request for temporary authority and Telenet was unaware of it until advised of its existence by the Commission's staff late on the day of October 6.[3/] A copy thereof

---

[2/] Contemporaneous with its September 24 Tariff filing, WUI wrote an unauthorized and untimely letter pleading referencing Telenet's 214 application, noting its own Petition to Deny that application, and its DBS offering.

[3/] WUI states at page 7 of its letter that "[a]ll carriers required to be notified by the Commission's letter of August 30, 1973 have been served with a copy of this letter . . ." The Commission's letter of August 30, 1973 appears never to have been published in the FCC Reports nor codified in the Commission's Rules, despite the requirements of 5 U.S.C. §552 that the agency "separately state and currently publish [its] rules of procedure . . ."

was first seen by Telenet on October 7.[4] WUI's failure to serve its request upon an obvious party-in-interest raises threshold questions of its motives, and the request should be evaluated scrupulously.

The apparent absence of "public notice" procedures for applications filed pursuant to Section 63.04 (See Section 63.52(b) requires that the Commission limit the procedural short-cuts inherent in Section 63.04(b) to true emergency situations and to cases -- e.g., involving only minor supplementation of facilities for previously-authorized services -- which clearly do not raise basic issues that should be resolved before approval of the application, rather than later. The Commission should not permit that rule to be used as an artifice to avoid the procedural and substantive considerations normally attaching to Section 214 applications for new types of service. Although WUI served its October 1 letter upon the other IRCs, other potentially interested parties may still be unaware of its existence. And, as will be shown below, WUI has utterly failed to demonstrate any "emergency" (other than its own selfish interest in beclouding the international data communications market while WUI attempts to get up to speed) and both its tariff "amendment and its request for "temporary" authority should be forthwith dismissed.

---

[4] The staff has advised Telenet that it would be accorded a 10-day period within which to file the instant pleading, running from October 7.

II. DBS Is A New Service, Beyond The Scope Of WUI's Existing Authority

It should be apparent to even the most casual observer of the international communications market that the proposed DBS is wholly unrelated to WUI's Datel service. WUI strains mightily at pages 2-4 of its October 1 letter to make DBS resemble Datel as much as possible ("an enhancement of traditional Datel service" [p.2]; "a class or subcategory of Datel" [p.4], and asserts that the only differences are that DBS is cheaper, and does not involve the use of voice for coordination purposes. However, to support its contingent request for temporary authority pursuant to Section 214 (on the assumption that it will fail to persuade the Commission that DBS can be offered simply by amending the Datel tariff), WUI implies that DBS is a "developmental, innovative" service, and that

> "The Commission should actively encourage, not inhibit, U.S. carriers to assume leadership positions in the development of new and innovative data services in order to guide the development of such services in a direction most favorable to the U.S. communications user." (October 1, letter, p. 6)5/

In fact, DBS is a new service utilizing different switching equipment and techniques than Datel, providing different performance characteristics (in terms of

---

5/ Telenet agrees that such is a proper role for the Commission and for U.S. carriers, but finds it impossible to reconcile WUI's proclamation either with its proposed DBS offering, or with its entrenched opposition to Telenet's Section 214 application to offer packet-switched communications services abroad.

transmission delays, channel transparency and error control) than Datel, and involving user operational procedures quite different from Datel. It is these technical and functional differences that lead to DBS's different cost and charging structure, which, while characterized by WUI as a "price reduction" might in fact cost some users more than Datel.

Whereas Datel employs traditional circuit-switching technology, setting up dedicated end-to-end physical channels upon demand, DBS employs store-and-forward data switching techniques. In the latter case, a user is not furnished a dedicated end-to end channel for the duration of the connection, but rather shares a physical channel on a statistical basis with other users. Consequently, the performance characteristics of these two services as seen by the user are quite different.

The switched channel furnished the Datel user is completely transparent to his data stream, introducing only a small fixed propagation delay between source and destination. In contrast, the "virtual" channel furnished to the DBS user is not transparent. Due to the store-and-forward technique employed by DBS, queuing delays at each of the switching nodes create additional transmission delays, and a varying end-to-end delay between source and destination is the result. In addition, Tymshare, Inc.'s domestic

Tymnet network, and presumably in the proposed DBS service which utilizes Tymnet technology,[6/] all data is code converted into ASCII form. Finally, Datel does not perform any error detection or correction, whereas Tymnet service and presumably DBS service will perform error detection and correction functions between switching nodes. (The fact that WUI failed to indicate that the DBS service would provide code conversion and error detection and correction, which are clearly significant service features, suggests an effort to obscure the true nature of the DBS service offering and an attempt to lead the Commission to believe that DBS and Datel are "like" services.)

Operations procedures for using DBS and Datel are also quite different. Whereas the Datel user simply dials a destination number as in the telephone network, the DBS user must go through an elaborate connection procedure involving (1) typically dialing in over a telephone line to a network node, (2) keying in a terminal identification code to indicate the class of terminal being used, (3) keying a user password number and (4) finally indicating the destination to which the user wishes to be connected.

As a consequence of the very different technology utilized to provide Datel and DBS service, the underlying costs and charging structures are quite different. Since

Datel provides the user with a dedicated end-to-end physical channel for the duration of a connection, charges are based upon the time which the channel is held. In contrast, since the DBS switching equipment is storing and forwarding user data over shared transmission facilities, overall costs and therefore charges depend in large part upon the amount of traffic each user sends.

In essence, Datel is functionally and technically similar to circuit switched telephone service (although limited to data transmission use), and DBS service is identical to Tymnet's domestic communications services, which Tymshare's new subsidiary, Tymnet, Inc., has described as

> "functionally similar to the 'packet switching' networks . . . [but] more accurately referred to as character oriented, virtual line switching." (Section 214 application, File No. W-P-C-927; page 3).

Elsewhere, Tymshare refers to its network service as a "superset" of packet-switching service.[7]

The CCITT, too, has recognized the clear distinction between circuit switching and packet switching, and has in its Recommendation X.1 treated circuit switching and

---

[6] It is Telenet's understanding that both WUI and the British Post Office would, initially at least, utilize switching equipment and software furnished by Tymshare, Inc.

[7] J. Rinde, "Tymnet I: An Alternative to Packet Technology," Proc. 3rd International Conference on Computer Communication, Toronto, 1976, at 268

packet switching as completely separate and distinct classes of service.

It is axiomatic that a carrier may not tariff a service for which it has no authorization, and that attempts to violate this rule require rejection of the tarrif at issue; See Press Wireless, Inc. v. FCC, 264 F2d 372 (U.S. App. D.C., 1959).

In support of its argument that it should be permitted to offer DBS through the expedient of amending its Datel tariff, WUI quotes from the Commission's Brief for Respondents in ITT World Communications, Inc. v. F.C.C., Case No. 76-4049 (U.S.C.A. 2):

> Ordinarily, a carrier whch has facilities in place that are capable of providing new services may offer the new service merely by filing a tariff. 47 U.S.C. §203."

WUI fails to quote the succeeding sentence:

> "When the facilities have been restricted, however, . . . a carrier may offer service behond the restriction only after the Commission has certified that removal of the restriction will serve the public interest, convenience, or necessity."

And WUI fails to note that the Commission there required that AT&T file a 214 application as a prerequisite to offering overseas dataphone services; See Overseas Dataphone Services, 57 FCC2d 705 (1976).

It should also be noted that WUI has previously taken the position that an IRC must proceed by way of a Section 214 application even where an existing service was to be unchanged, and only tariff rates were to be modified: See TRT Telecommunications Corporation, (Off-Peak Telex"), 53 FCC2d 649, at 654 (1975).[8]

III. DBS Cannot Be Offered Prior To Commission Action On The Pending Section 214 Application of Tymnet, Inc.

Not only is WUI's proposed DBS a new service, as discussed above, it is, on its face, a patently unlawful service, for it is proposed to be implemented in conjunction with the domestic Tymnet communications network -- a network which has been offering a public data communications service for hire for over four years in violation of the Communications Act.

As the Commission's files reflect, Telenet has twice complained to the Commission that Tymshare, Inc., was, through Tymnet, offering an unregulated public communications service. By letters of September 19, 1975, and January 21, 1976, Telenet requested that the Commission order Tymshare to cease and desist its uncertificated service or to seek clarification as required by Section 214 of the Act. In May 1976, a new corporate subsidiary of Tymshare, Inc. -- Tymnet, Inc. -- filed an application for Section 214 certification, and on July 1, 1976, Telenet filed its "Comments" with respect to that application, pointing out that the applicant had failed to identify its corporate officers and directors, or to demonstrate in what manner it would effectuate the "maximum separation" principles adopted as a result of the Commission's Computer Inquiry (28 FCC2d 2[illegible] [1971]). Tymnet, in the intervening three months, has neither responded to Telenet's "Comments" nor amended its application to bring it into conformity with Section 64.702 of the Rules and the Commission's policies. Tymshare thus enjoys the best of both worlds: It operates in a totally unregulated mode; while, through its ungrantable application, it creates a superficial impression of a willingness to accede to the Commission's jurisdiction.

---

[8] There, the Commission stated: "Contrary to the contention of WUI, we believe that TRT properly proceeded under Section 203 rather than Section 214 of the Communications Act. The proposed tariff involves a rate change for an existing authorized service rather than a new service requiring prior authorization under Section 214."

It is not our purpose to argue the merits of the Tymnet application here. However, that application is significant to consideraton of WUI's request on at least three major and independent points: (1) It describes a service far different than Datel; (2) It may not be granted unless amended to conform to Section 64.702 of the Rules;

and (3) The WUI DBS service would be merely an overseas extension of the present Tymnet network; utilizing equipment furnished by Tymshare and, apparently, operated under the control of Tymshare's network "supervisor" computers, it would simply replace or augment the present Tymnet link to the United Kingdom. And, of course, DBS traffic would be carried to and from the hinterland by Tymnet.

WUI's submission is -- apparently by design -- far from clear regarding the "arrangements which exist between WUI and Tymnet for the provision of service. WUI's financial projections show "payouts" to Tymnet, and the descriptive material accompanying its tariff filing implies that all host computer systems (as well as most, if not all, terminal users) in the U.S. would be connected to DBS via Tymnet. From this information, it appears that WUI and Tymnet are dealing with each other on a carrier-to-carrier basis, jointly participating in the provision of a through communication service to the U.K. Until the Commission grants Tymnet's Section 214 application, it is obvious that such "arrangements" are incapable of implementation and should not be sanctioned by the Commission.

IV. WUI's Request For "Temporary Authority" To Offer DBS Should Be Dismissed Or Denied Without Prejudice To Its Tender Of A Completed Section 214 Application, To Be Processed In Accordance With Normal Procedures.

WUI's October 1 letter requests that the Commission accord it special treatment of its DBS proposal, under Section 63.04 of the Rules. Specifically, WUI requests that "temporary authority" for the new service be granted before it even files a Section 214 application for the service and, obviously, before other interested parties have an opportunity to review and comment upon such application. The circumstances surrounding this request are quite unlike those present in the case involving RCA Globcom's filing of a proposal for Datel-II service, for which the Common Carrier Bureau recently granted temporary authority. In that case, as noted by the Bureau, the tariff filing had been on public notice for a lengthy period of time, and no comments directed to the merits of the proposal were received. Also unlike the instant circumstances, Datel-II did not involve the attempt of one carrier to leapfrog its own proposal ahead of a pending proposal of another carrier while at the same time opposing such other proposal, as WUI has done regarding Telenet's earlier-filed and presently-pending application to provide functionally similar service to the identical overseas market.

WUI devotes the bulk of its October 1 letter to an argument that the proposed DBS is merely an enhancement of its Datel service, and that thus its attempt to provide the service through a mere tariff amendment should be permitted. It describes the service differences between the two services merely in terms of a "price reduction" (October 1 letter, p. 4) and the fact that "DBS does not encompass voice service at all, whereas Datel includes limited voice for coordination purposes." (Ibid). As noted above, Telenet is of the view that WUI has been far too modest in distinguishing its service from Datel. However, if the only differences to be perceived by customers are lower price and the absence of voice coordination, one must wonder as to the need for a "temporary" or "emergency" authorization.

As noted above, the proposed integration with the Tymnet service -- an unregulated and unlawful provision of a public data communications service -- raises a serious question as to whether the Commission may entertain any application from WUI so premised at this time. Manifestly, the attempt to render a new international service through an uncertificated domestic network must be considered only in the context of a formal application filed pursuant to Section 214 of the Act and Section 63.01 of the Rules, rather than in the peremptory fashion proposed by WUI.

In an attempt to support an immediate need for its service, WUI claims that "DBS is expected to satisfy an existing unmet communications requirement" (October 1 letter, page 6), and, on Attachment 2 to its September 24 transmittal, WUI states:

> "Through this service, U.K. organizations will be able to access such major on-line information retrieval services in the U.S. as the government based National Library of Medicine's 'Medline' service and commercial services such as Lockheed's 'Dialog' and System Development Corporation's 'Orbit and Databasics'. WUI is also offering to interconnect DBS with the Telenet network and will offer such an arrangement to other U.S. networks and other data bases and remote computing facilities."

By implying that only through grant of its temporary authority may international access to the data bases of the National Library of Medicine, Lockheed, and SDC be achieved, WUI totally overlooks the fact that each of these is currently receiving service from Telenet, and that a grant of Telenet's long-pending application would afford each of these the international access which WUI correctly asserts they require. Thus, WUI's arguments in favor of a "temporary authorization" for DBS are actually supportive of a prompt grant of Telenet's application.

WUI's gratuitious "offer" to Telenet to permit it to access the U.K. through the WUI-Tymnet switch cannot be taken seriously: Whereas Telenet is an advanced packet switching network, capable of handling asynchronous and synchronous transmission speeds, and engineered to efficiently utilize the X.25 international "packet mode" protocol utilized by the European PTT packet networks, Tymnet technology does not provide X.25 compatibility and is substantially more limited in its performance capability. Interconnection of Telenet to the public packet networks operated by foreign administrations through Tymnet's facilities would seriously degrade Telenet's service offering, in terms of transit delays, transmission speeds, and service reliability.

WUI argues that "[t]he likely result of imposing a Section 214 requirement herein would be the postponement, for perhaps a year or more, of a joint WUI/UKPO experiment . . .", and that the "prolonged postponement of the introduction of DBS will adversely affect (i) the interests of international comity; (ii) the timely development and introduction of innovative data services in response to ever-evolving customer demands; and (iii) the ability of United States carriers to adequately influence the direction and nature of such services." In fact, precisely contrary results would flow from the peremptory authorization of DBS, in that

(i) "International comity" would suffer a setback, because the Commission would be authorizing a switched data service incompatible with the X.25 standard agreed upon internationally;

(ii) Such an action by the Commission would be construed as a rejection by the United States of international packet switching - a truly "innovative" data service - in favor of an older, more limited, low speed, asynchronous technology which has seen little change or innovation in the past five years.

(iii) "The ability of the United States carriers to influence the direction and nature of such services" is not an unmitigated benefit. If recent Commission pronouncements on the subject of international services and pricing are any guage, it would appear that the Commission is concerned that "influence" of the existing international record carriers upon "the direction and nature" of international services has been negative rather than positive.

A typical example of WUI's "influence" is to be found in its entrenched opposition to Telenet's May 1976 application to provide a packet-switched service to the United Kingdom. "Influence" so-wielded hardly serves the objective of encouraging innovative service.

Telenet submits that the Commission, consistent with established precedent, sound regulatory policy, and elemental due process, must dismiss or deny WUI's October 1 request as involving an impermissible extension of the intended scope of Section 63.04(b) of the Rules.

Respectfully submitted,

TELENET COMMUNICATIONS CORPORATION

By: ______________________
Philip M. Walker
Vice President and General Counsel
1050 17th Street, N.W.
Washington, D.C. 20036

By: ______________________
Donald E. Ward
Law Offices of Donald E. Ward
1050 17th Street, N.W., Suite 840
Washington, D.C. 20036

October 18, 1976

Its Attorneys

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)

RCA GLOBAL COMMUNICATIONS, INC.)

Application for such modification of its existing authorizations under Section 214 of the Communications Act of 1934, as amended, as may be necessary to use its previously authorized overseas communications facilities for the provision of an enhanced class of Overseas Datel Service (Datel II).) File No.

APPLICATION FOR MODIFICATION OF AUTHORIZATION OF RCA GLOBAL COMMUNICATIONS, INC.

RCA Global Communications, Inc. (RCA Globcom) hereby applies for such appropriate modification of its existing authorizations under Section 214 of the Communications Act of 1934, as amended, as may be necessary to use its previously authorized overseas communications facilities for the provision of an enhanced class of Overseas Datel Service (Datel II). Datel II is initially planned to be offered on an experimental basis for a one-year period between the United States and the Netherlands.

Datel II will provide an overseas data transmission capability not presently available to users in the U.S. and abroad. The existing Datel offering (Datel I), first introduced in the mid-1960's, was designed to handle switched data transmission at medium speeds (1200-2400 bits per second (bps)). Datel II will provide improved data transmission capability designed to meet customer requirements for switched data at higher speeds (initially 4800 - 9600 bps). Datel II will further improve existing methods of handling overseas switched data transmission through the use of advanced computerized switching facilities. At the outset, customers will be able to access Datel II for overseas switched data transmission by means of dedicated lines to RCA Globcom's operating center. It is also intended to provide access to Datel II at an early date through appropriate interconnections with domestic networks.

The Commission has stated that it has "a general policy of encouraging competitive carriers to undertake new and innovative service offerings that will afford users a wider choice of options." (53 FCC 2d 649, 653 (1975)). Aside from general precedent, the Commission in its decision in the Dataphone Inquiry specifically found that it would be "in the public interest for the IRCs to expand their switched record services, such as Datel...." (57 FCC 2d 705, 709 (1976)). Datel II is both consistent with and will further Commission policy to encourage improved service for the benefit of the public.

In response to Section 63.01 of the Commission's Rules and Regulations, RCA Globcom submits the following information in support of this application:

1. RCA Globcom is a corporation organized and existing under the laws of the State of Delaware. Correspondence concerning this application should be addressed to:

Francis J. DeRosa
Vice President and General Counsel
RCA Global Communications, Inc.
60 Broad Street
New York, New York 10004

2. RCA Globcom is a common carrier subject to Section 214 of the Communications Act of 1934, as amended, and an authorized carrier, as defined in Section 103(7) of the Communications Satellite Act of 1962, engaged in the business of furnishing international communications services by cable, satellite and radio facilities.

3. No new facilities are requested by this Application.

4. By Order adopted April 8, 1964 in File Nos. T-C-1739 et al., RCA Globcom is authorized to use its overseas voice-grade facilities and connecting landline circuits to provide: "telegraph message

service; telex service; leased telegraph channel service; *facsimile (including photo) and data and program transmission services, including voice for cue and contact control; any other record service*; leased circuits for alternate voice-record use; and leased circuits for alternate and simultaneous voice and non-voice use by defense agencies of the United States Government;...." (Emphasis supplied) RCA Globcom is also authorized to provide television transmission and reception service between the U.S. Mainland and overseas points, leased channels for high-speed (50 kilobit) data transmission, "Hot Line" service between the U.S. Mainland and Brazil and Puerto Rico and overseas telephone service to and from Guam. The introduction of the Datel II option will improve and expand RCA Globcom's overseas switched data transmission service capability.

5. Temporary authority to provide Datel II to the Netherlands was granted by letter dated October 6, 1976 (TAF-34).

6. RCA Globcom hereby requests such appropriate modification of its existing authorizations as may be necessary to permit the use of its overseas voice grade facilities and connecting circuits for the provision of a high-speed switched data transmission service (Datel II). Datel II will initially be offered at speeds up to and including 9600 bps between the United States and the Netherlands for a one-year experimental period.

7. RCA Glōbcom will commence service between the U.S. and the Netherlands using one previously authorized TAT-6 cable circuit. A previously authorized SPADE satellite channel will be activated on demand to provide additional capacity during peak traffic periods. Additional facilities will be employed to meet increased demand as the need develops. RCA Glōbcom has reached an agreement with the Netherlands Administration to inaugurate Datel II effective immediately. A copy of a message confirming this agreement is attached hereto as Exhibit A.

8. Datel II is designed to satisfy the need for high-speed, high-quality switched data service by users who have insufficient traffic to support financially the installation of a dedicated leased channel. Datel II will also serve existing users requiring high-speed data transmission for short periods each day for Remote Job Entry (the ability to enter a distant computer from a remote site terminal) or "batch" operations which cannot currently be effectively accommodated by existing overseas data services. Actual interest in the early availability of this offering has been shown by members of the international banking community and by other data customers.

Thus, Datel II is intended to satisfy an unfilled market demand and enable users to explore new applications to meet their international data transmission requirements.

9. The operational configuration in which Datel II will initially be offered is illustrated in Exhibit B. The system as shown will provide users with access to RCA Globcom's international switched data facilities via dedicated lines. The system is also designed with the capability to be expanded to provide access from domestic switched digital or analog networks. When a customer desires to establish a call, a service request is detected at either the domestic or overseas automatic line switching unit, the international connection is automatically established, and the international link appears as a dedicated facility to the customer for the call duration. The automatic switching equipment at each node will be capable of accepting data or digital facsimile inputs.

10. The rates, terms and conditions to govern the offering of Datel II are contained in revisions to RCA Glōbcom's Tariff F.C.C. No. 79 filed pursuant to Transmittals Nos. 4139, 4176 and 4181 and associated explanatory material. Additional information pertaining to Datel II is contained in RCA Glōbcom's letters to the Commission of August 19, 1976, September 1, 1976 and September 23, 1976. RCA Glōbcom incorporates all of this material herein by reference.

11. This application is filed without prejudice to RCA Glōbcom's position that additional Commission authorization under Section 214 of the Communications Act of 1934, as amended, is not required in order to use authorized circuits to improve, enhance or expand an existing previously authorized service such as Datel in the manner proposed by RCA Glōbcom.

12. RCA Glōbcom certifies that it has mailed a copy of this application to each party listed on pages 2 and 3 of the Commission's letter of August 30, 1973 to the overseas carriers regarding the revised procedures for processing applications for permanent and temporary authorizations and each party listed in Appendix A of said letter.

WHEREFORE, RCA Global Communications, Inc. respectfully submits that the present and future public interest, convenience and necessity require the grant of this application.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

By: s/Robert J. Angliss
Executive Vice President,
Services and Marketing

By: s/Francis J. DeRosa
Vice President and General Counsel
RCA Global Communications, Inc.
60 Broad Street
New York, New York 10004

October 20 , 1976

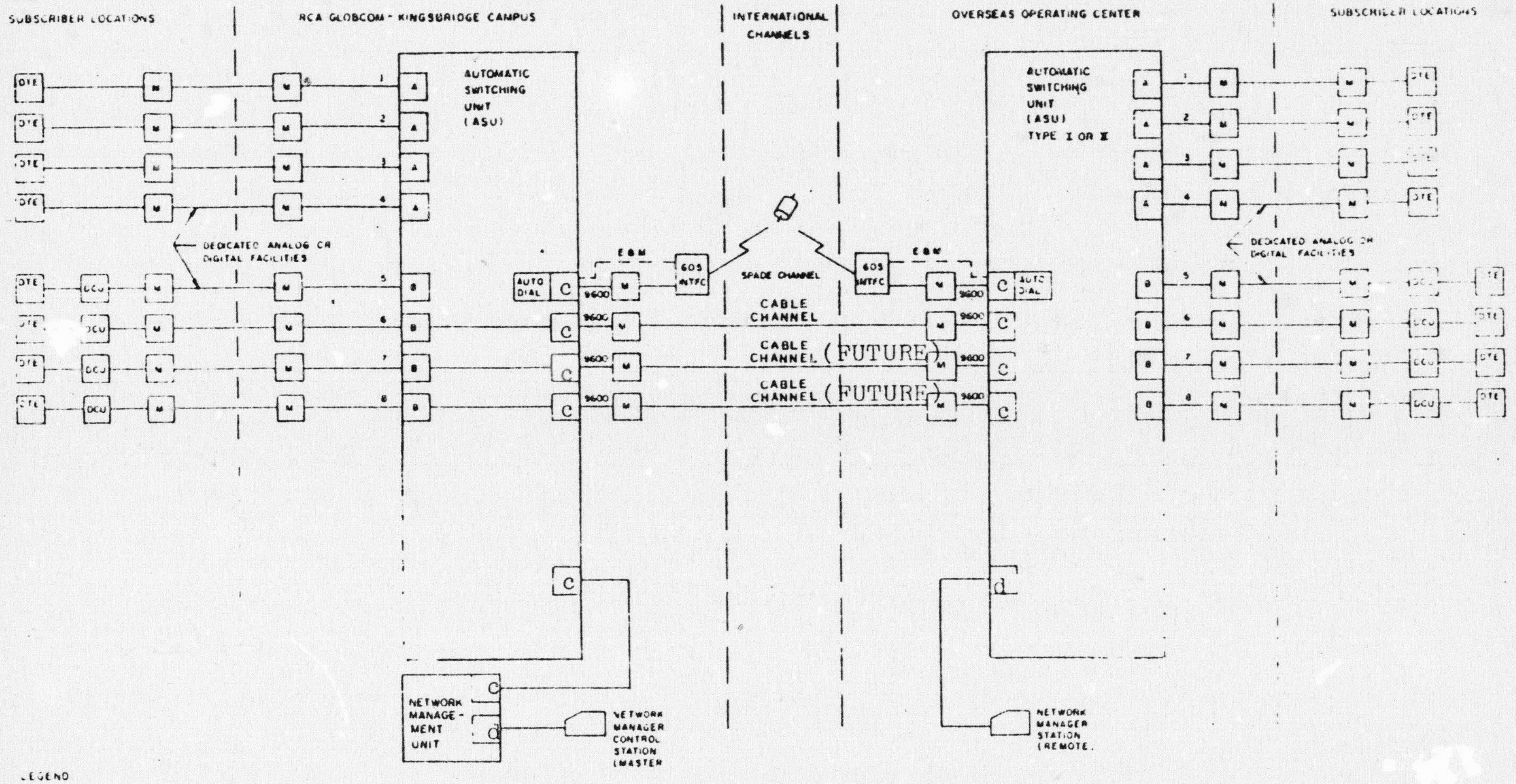
EXHIBIT A

ITELCOM THE HAGUE
TO
RCA GLOBCOM NEW YORK
ATTENTION MR SCHWAMBERGER

NR 2622/IT2 OF 2-9-1976

I CONFIRM HEREWITH, THAT IN ACCORDANCE WITH RECENT UNDERSTANDINGS REACHED BETWEEN MR. ANGLISS, VICE-PRESIDENT OF RCA GLOBCOM AND MY ADMINISTRATION IT HAS BEEN AGREED THAT DATEL-II SERVICE BETWEEN RCA AND THE NETHERLANDS WILL BE INAUGURATED ON ABOUT OCTOBER 1, 1976.

KIND REGARDS
A. VAN WIJNGAARDEN


SUBSCRIBER LOCATIONS
RCA GLOBCOM - KINGSBRIDGE CAMPUS
INTERNATIONAL CHANNELS
OVERSEAS OPERATING CENTER
SUBSCRIBER LOCATIONS
DTE
M
DCU
A
B
1
2
3
4
5
6
7
8
AUTOMATIC SWITCHING UNIT (ASU)
AUTOMATIC SWITCHING UNIT (ASU) TYPE I OR II
DEDICATED ANALOG OR DIGITAL FACILITIES
AUTO DIAL
C
9600
EBM
605 INTFC
SPADE CHANNEL
CABLE CHANNEL
CABLE CHANNEL (FUTURE)
CABLE CHANNEL (FUTURE)
d
NETWORK MANAGEMENT UNIT
NETWORK MANAGER CONTROL STATION (MASTER
NETWORK MANAGER STATION (REMOTE.

LEGEND

M	DATA MODEM OR LINE DRIVER @ 2.4, 4.8, OR 9.6 KBPS
DCU	DATA CONTROL UNIT
605 INTFC	CCITT # 5 SIGNALLING CONVERTER
A	DEDICATED RS232/V.24 SINGLE CHANNEL I/O MODULE (SYNCHRONOUS)
B	DEDICATED RS232/V.24 SINGLE CHANNEL I/O MODULE WITH ADDRESSING CAPABILITY (SYNCHRONOUS)
c	RS232/V.24 HIGH SPEED SYNCHRONOUS CHANNEL I/O MODULES
d	V.24 LOW SPEED ASYNCHRONOUS SINGLE CHANNEL I/O MODULE

EXHIBIT B

BLOCK DIAGRAM - INTERNATIONAL SWITCHED DATA SERVICE

DATEL-II

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

KATHRYN I. McDONNELL
Attorney

Telephone (212) [illegible]

November 2, 1976

Mr. Vincent J. Mullins,
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Database Service

Dear Mr. Mullins:

Western Union International, Inc. (WUI), on September 24, 1976, issued amendments to its Tariff F.C.C. No. 11 to provide overseas access to and from database computers and remote computing services between the United States and the United Kingdom (denominated "Database Service" or "DBS").

Upon being advised by the Commission's staff that introduction of DBS might require additional authority pursuant to Section 214 of the Communications Act, WUI, by letter dated October 1, 1976, set forth arguments supporting its belief that additional Section 214 authority is unnecessary for the commencement of DBS. Therein WUI additionally demonstrated that notwithstanding its belief that no additional 214 authority was required, the Commission in fact has before it substantially all information required by Sections 63.01 and 63.04 of the Commission's Rules and, accordingly, WUI requested a grant of special temporary authority to begin its proposed Database Service.

Since the latter filing, various objections to WUI's tariff amendments and/or request for temporary authority have been filed with the Commission.* WUI herein will briefly respond to those objections.

---

*The objections include a Petition to Deny, dated October 15, 1976, by Graphnet Systems, Inc. (Graphnet); a Petition to Reject and Deny, dated October 18, 1976, by Telenet Communications Corporation (Telenet) and a telex, dated October 7, 1976 by ITT World Communications Inc. (ITT).

The arguments presented by the three objectors basically fall into three categories: those going to the question of Section 214 authority; those claiming lack of necessary information and those aimed at promoting the objectors' own proposals. The importance of these filings however, lies not in the arguments put forth therein, which WUI will herein demonstrate to be moot or without merit, but in what they fail to put forth. None of the objecting pleadings sets forth any substantive arguments against the public interest aspects of WUI's proposed Database service. That WUI has identified an immediate public need for DBS and is capable of and willing to meet that need on an expedited basis is not disputed.

WUI has already sufficiently set forth the grounds for its position that no additional Section 214 authority is required to implement DBS and will not reiterate those grounds herein. Suffice it to say that, to the extent the Commission is persuaded that additional authority is needed, WUI requested such authority in its October 1 letter and has provided the Commission with sufficient information to justify a grant of same. In view of WUI's willingness to accept an early grant of special temporary authority for DBS those arguments which hinge on Section 214 are moot.*

Also moot are those arguments to the effect that WUI has not presented sufficient information to evaluate its proposal. Although WUI has previously filed with the Commission, pursuant to Section 43.51 of the Commission's Rules, its agreement with the United Kingdom Post Office (UKPO), WUI has attached that agreement hereto (Attachment I). And although WUI has no obligation to file a copy of its agreement with Tymshare, Inc., it has attached the same hereto (Attachment II).** A review of these agreements dispels concerns that WUI's Database Service may be inconsistent with various Commission policies or that it may be available only on a discriminatory basis.

---

*In view of the public interest favoring an early implementation of DBS, the Commission should give no weight to those arguments urging that DBS be treated only in the context of a formal application.

**While WUI anticipates that its agreement with Tymshare, Inc. will be assigned to Tymnet, Inc. upon the latter's receipt of authority to acquire the communications network of Tymshare and operate as a common carrier, that agreement is not dependent on such an occurrence. Contrary to the charges of the objectors, WUI is not dealing with Tymshare on a carrier-to-carrier basis but as a customer in its own right and as agent for those of its joint users wishing to go overseas. The payout to Tymshare is merely a pass-through of the amounts Tymshare would have collected from its joint users on a domestic call to New York.

As far as the Computer Inquiry is concerned, WUI's Database Service does not involve data processing. WUI carries the data overseas in the same form it is received from its customers. Nor is there any inconsistency with gateway policies. WUI receives the data from Tymshare and its joint users in WUI's New York Gateway and each customer pays for the call to reach WUI.*

Furthermore, as paragraph 1(b) of WUI's agreement with Tymshare indicates, WUI's Database Service will be available to any other customer or carrier.** To the extent that any domestic entity wishing to interconnect with WUI for Database Service is presently technically incompatible with WUI, steps will be taken to remedy that situation. One of the traditional functions of an international record carrier is to make various domestic systems compatible with the overseas networks*** and DBS will not be an exception.

Lastly, the attempt by two of the objectors to promote their own applications for overseas service at the expense of DBS should be given no weight because, unlike WUI, those objectors lack the necessary agreement of foreign administrations to provide the service for which they have applied and, thus, their applications are at best premature. Moreover, unlike WUI which is an authorized international record carrier with existing overseas facilities their applications involved questions of geographical expansion and certificate authority requiring careful scrutiny.****

---

*The inclusion of the price of the domestic call to WUI's gateway within the price of overseas DBS is similar to the pricing arrangement for overseas telex.

**This availability will, of course, be on a non-discriminatory basis.

***For instance, in order to make international telex available to domestic TWX subscribers, WUI converts the 8-level ASCII code of the latter to the 5-level baudot code of the former.

****See WUI's Petition, dated July 23, 1976, to Deny Telenet's application (I-T-C-2634) to extend its domestic system overseas and WUI's Reply, dated August 27, 1976; see also WUI's Petition, dated July 12, 1976 to Deny Graphnet's application (I-P-C-11 and 11-A) to extend its domestic service to Europe and WUI's Reply, dated August 27, 1976.

Nor should the Commission be influenced by the suggestion made by one of the objectors that DBS is somehow technically inferior to the objector's own proposal because DBS does not have X.25 compatibility. First of all X.25 is a Recommendation* applicable only to connecting a data terminal to a packet switching network. It is not applicable to the internal operation of a network nor applicable to the interconnection of mulitple networks. There is currently no agreed upon recommendation applicable for the interconnection of international--let alone intercontinental--networks as this question will be studied during the next CCITT study period of 1977-80.

Should some form of X 25 be eventually adopted for international service, WUI of course would adhere to same. The public interest, however, would not be served by holding up DBS because it does not comport with a Recommendation which is not applicable to international service and which is subject to many changes and refinements.

Secondly, it is clear that potential users of DBS are interested in obtaining service rather than choosing sides among particular carriers or particular transmission techniques. The letters attached to the application of Telenet for service to the United Kingdom support this view. Thus, the letter of Scientific Time Sharing Corporation (Ex. 2), after praising the domestic networks of Telenet and Tymnet, supports the "data communications service of the kind proposed by TELENET" (emphasis supplied).

The supporting letter of System Development Corporation (Ex. 10) requests the Commissin to "support...imaginative companies such as Telenet (or TYMSHARE)."

Finally the letter of Lockheed Information Systems (Ex. 12) states:

> ...while we wish to give our enthusiastic support to the present application, we would also support any similarly priced data communications application for service outside of North America." (emphasis supplied)

In summary, there is a customer need for the type of service proposed by WUI; WUI is capable of and willing to meet that need in conjunction with the UKPO; none of the objectors disputes the fact that such a need exists or that WUI is capable of meeting that need and the public interest would not be served by delaying the availability of DBS.

---

*Study Group VII, CCITT

Respectfully submitted,

Kathryn E. McDonnell

cc: ITT World Communications Inc
Graphnet Systems, Inc.
Telenet Communications Corp.

[illegible]

Telephone
01 432 4923
Telex 21601 [illegible]

In any reply please quote
ETI
Your reference

External
Telecommunications

Attachment I, p.1 of

Mr R Romanelli
President
Western Union International Inc
One WUI Plaza
New York
NY 10004
USA

Dear Mr Romanelli

UK-USA DATABASE ACCESS AND REMOTE COMPUTING COMMUNICATIONS SERVICE

As you know our continuing evaluation of the market requirements for international data transmission has identified a need to provide access to database and remote computing systems in the USA and in the UK.

Following our recent discussions on the way in which this need can most readily be met, I am pleased to advise you that, ad referendum, the British Post Office agrees to use the facilities of Western Union International to provide access to such computer systems.

The proposed data service would provide customers in the UK with access to appropriate database and remote computing systems in the USA: it would also permit access to similar systems in the UK from customers in the USA. Within the UK customers will access over the domestic public switched telephone network a network switching facility in London, leased by the British Post Office: access will not be permitted over the UK telex network. The switching facility in London will be connected to a compatible WUI switching facility in New York by means of trans-Atlantic cable facilities. The British Post Office will provide its half of such facilities and Western Union International will provide the matching half.

The service will provide access to databases and remote computing systems connected to Tymnet in the USA and to other such systems in the UK and USA as may be agreed subject to operational considerations.

The service will be introduced for an initial period of 12 months: continuation of the service beyond this will depend inter alia upon the extent to which it is used. If after the initial period it is seen that a real demand exists, and that sufficient traffic is being generated, a more permanent arrangement will be considered.

/Customer

Customer charges to be applied in each country will be set independently and according to national practices and legislation. We propose the application of accounting rates and divisions on the lines already discussed, i.e US $8 per connect hour and 40 cents per thousand characters, divided equally between Western Union International and the British Post Office. Any outpayments in the USA will be made by Western Union International from its share of the accounting rate and similarly the British Post Office will cover any necessary outpayments in the UK.

I trust that the foregoing is acceptable to you. Because of their expressed close interest in the development of international data services I am copying this letter to our colleagues in CEPT as well as to our other correspondents in the USA and Canada.

Yours sincerely

M L FORD

Attachment I, p. 3 of 3

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

ROMANELLI
ident

Telephone 3636407

September 23, 1976

Mr. M. L. Ford
Head of Division
ET1 - Service Policy Rates & Tariffs
United Kingdom Post Office
External Telecommunications Executive
Alder House
1 Aldersgate Street
London EC1A 1AL, England

Dear Mr. Ford:

This will acknowledge with thanks receipt of your letter of September 20 regarding UK-USA Database access and remote computing communications service.

I am pleased to advise you that your letter is acceptable to WUI and we will be making the necessary filings tomorrow with the FCC. As we discussed, our target date to start this service is December 1, 1976 and I will keep you advised of developments on this side which may impact on that date.

Very truly yours,

R. P. Romanelli

Aug. 1

Agreement made this 10 day of July, 1976, between and ong Tymshare, Inc., a California corporation with its main office in Cupertino, California (hereinafter referred to as Tymshare) and Western Union International, Inc., a Delaware corporation with its main office in New York, New York (hereinafter referred to as WUI),

WITNESSETH:

Whereas, Tymshare and its joint users utilize within the continental United States a communications network pursuant to the joint user provisions of the private line tariff of the American Telephone and Telegraph Co., and

Whereas, Tymshare and its joint users have a need for an overseas data transfer service, and

Whereas, WUI is engaged in the business of providing overseas record telecommunications services and is willing to and capable of providing an overseas data transfer service to meet the needs of, among others, Tymshare and its joint users,

Now, Therefore, for and in consideration of the mutual covenants and undertakings herein contained, and for such other good and valuable consideration as may be appropriate, the parties hereto agree as follows:

1. General Nature of Service

WUI, in conjunction with its appropriate overseas correspondents, shall provide and make available a data transfer service between the United States and various of WUI's authorized erseas points in the following manner:

(a). WUI's overseas data transfer service shall initially be available at WUI's New York City gateway, but may at WUI's sole discretion be made available at any or all of WUI's other then existing gateways.

(b) WUI's overseas data transfer service shall be available to Tymshare and its joint users, as well as to any other customer or common carrier desiring to avail itself of such service.

(c). The rates, operational details and service features of overseas data transfer service shall be determined by WUI in conjunction with its appropriate overseas telecommunications correspondents.

(d). The regulations and rates for the furnishing of WUI's data transfer services shall be as provided in tariffs to be filed by WUI.

2. Connection

For the purpose of enabling itself and its joint users to avail themselves of WUI's overseas data transfer service, Tymshare and its joint users may connect with WUI's overseas data transfer network in the following manner:

(a) The connection shall initially take place at WUI's premises in New York City, but may thereafter take place at such other locations as WUI and Tymshare on behalf of its joint users may hereafter agree upon.

(b). Tymshare shall secure for itself and its joint users the necessary lines between Tymshare's New York City operating center and WUI's premises in New York City.

(c) Tymshare and WUI agree to cooperate to assure quality control and testing of circuitry and to insure prompt, efficient elimination of technical problems.

(d) Nothing contained herein shall prevent Tymshare from entering into a similar agreement or arrangement for the interconnection of its communications network with any other organization providing overseas data transfer and communications capability.

3. Billing

WUI shall bill Tymshare and each of its joint users individually for their respective use of WUI's overseas data transfer services. Tymshare agrees to provide WUI with such information as may be necessary to permit WUI to adequately perform its billing function hereunder.

4. Statistical Information

Tymshare and WUI shall cooperate in gathering and supplying each other with such relevant statistical information as may be available to them regarding the proposed service.

5. Equipment

Tymshare shall, upon request from WUI, initially sell to WUI one communication processor as described in Attachment A hereto and on mutually acceptable terms and conditions. Tymshare further agrees to provide or cause to be provided communication processors to WUI's overseas telecommunications correspondents as well as additional communication processors to WUI on terms and conditions similar to those provided in Attachment A.

6. Contingency of Agreement

This Agreement is subject to:

(a) the obtaining and continuance of such governmental authorizations as may be required, and

(b) an order being placed with Tymshare or an affiliated company by one or more of WUI's European telecommunications correspondents for purchase or use of equipment similar to that described in Attachment A hereto, and

(c) the obtaining of an operating agreement for data transfer service between WUI and one or more of its European telecommunications correspondents.

7. Tariffs

WUI's overseas data transfer service including its terms, conditions and charges, shall be provided to users thereof, in accordance with WUI's tariffs; and said tariffs shall supersede any inconsistent terms and conditions specified herein. WUI agrees to file all necessary tariffs and amendments thereto.

8. Construction of Agreement

The validity, construction and enforcement of this Agreement shall be governed by the laws of the State of California.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year first above written.

Western Union International, Inc.

By:
Title: Vice President

Tymshare, Inc.

By:
Title: Vice President

Attachment A

The item of equipment herein described will be sold to Western Union International, Inc. (WUI) pursuant to Paragraph 5 of the Agreement, dated ~~July 22~~ aug 10, 1976, between and among WUI and Tymshare, Inc.

(a) Description of Equipment:

Communication Processor including a V72 minicomputer with 24K of main memory capable of handling 60 asynchronous lines and 16 synchronous lines.

(b) Delivery Date:

August 16, 1976

(c) Place of Delivery:

1 WUI Plaza, New York City, New York

(d) Price of Equipment:

$60,000.

(e) Terms of Payment:

Net 30 days, F.O.B. Cupertino, California

(f) Risk of Loss:

Remains with Seller until such time as the goods are actually received by the Buyer.

(g) Warranties: The Seller expressly warrants that:

(1) The equipment is in good order and condition.

(2) The equipment is fit for Buyer's use in providing an overseas data transfer service.

(3) The equipment is free of any rightful claim of third persons for patent infringement.

This Attachment and its terms and conditions are incorporated by reference in the above-mentioned Agreement between the parties.

Western Union International, Inc.

By:
Title: Vice-President

Tymshare, Inc.

By:
Title: Vice President

TYMSHARE

[illegible]

Attachment II, p. 7 of 7

November 1, 1976

Mr. S. Wernikoff
Vice President - Planning
Western Union International, Inc.
26 Broadway
New York, NY 10004

Dear Mr. Wernikoff:

This is to confirm the agreement which we have reached concerning the payments from WUI to Tymshare with relation to WUI's overseas database and remote computing service.

For customers accessing WUI's service through the Tymshare network and for customers being accessed through Tymshare's network, WUI will pay Tymshare $1.00 per connect hour and 10¢ per kilocharacter transmitted. For customers accessing WUI's service directly, WUI will pay Tymshare $0.75 per connection to cover the billing and statistical function.

Very truly yours,

Warren F. Prince
Vice President
Data Services Division

Agreed

Serge Wernikoff
S. Wernikoff
Western Union International, Inc.

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
(202) 296-1600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS N. FROHOCK
CARL R. RAMEY
EDWARD P. TAPTICH
PETER M. ANDERSEN
NORMAN P. LEVENTHAL
JAMES R. COOKE
STEVEN A. LERMAN
VIRGINIA S. CARSON
JOHN J. SMITH

RECEIVED
NOV 2 1976
CHIEF, COMMON CARRIER BUREAU

November 2, 1976

Walter R. Hinchman, Chief
Common Carrier Bureau
Room 500
Federal Communications Commission
Washington, D. C. 20554

Re: Western Union International, Inc.;
Application for Temporary Authority,
Filed October 1, 1976.

Dear Mr. Hinchman:

By letter dated October 1, 1976, Western Union International, Inc. (hereinafter "WUI"), requested temporary authority, pursuant to Section 214 of the Communications Act and Section 63.04 of the Commission's Rules, to provide certain services reflected in its September 24, 1976, Transmittal No. 1073 tariff revisions. On October 5, 1976, Graphnet Systems, Inc. (hereinafter "Graphnet"), filed a Petition to Deny WUI's request. In that pleading, Graphnet set forth in detail reasons why a grant of the summary authorization urged by WUI would be inconsistent with the public interest.

Under Section 1.45(a) of the Commission's Rules, any oppositions to Graphnet's pleading were to be filed within 10 days. Adding the 3 days for mail service permitted by Section 1.4(g) of the Rules, any WUI opposition to Graphnet's petition was required to be filed October 28, 1976.

Graphnet is unaware of WUI's having filed either an opposition to Graphnet's petition, or a request for extension of time by October 28th -- or, indeed, at any time to date. Accordingly, Graphnet's petition stands unopposed, is ripe for action, and should be granted immediately. As detailed in Graphnet's petition, WUI's request for temporary authority seeks to avoid all usual application processing procedures. There is no reason why WUI should be privileged to ignore the normal requirements of the Commission's pleading processes as well.

Very truly yours,

Edward P. Taptich

Edward P. Taptich
Counsel for Graphnet Systems, Inc.

cc: Robert Michelson, Esq.
Joel S. Winnik

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of WESTERN UNION INTERNATIONAL, INC. Application for modification of its existing authorizations under Section 214 of the Communications Act of 1934, as amended, to use its previously authorized facilities for the provision of Database Service.	)	File No.

APPLICATION OF WESTERN UNION INTERNATIONAL, INC.

Western Union International, Inc. (WUI) hereby applies for such appropriate modifications of its existing authorizations under Section 214 of the Communications Act of 1934, as amended, as may be necessary to use its previously authorized facilities to provide overseas access to and from database computers and remote computing services. ("Database Service" or "DBS"). Database Service will be offered initially on an experimental basis for a one-year period between the United States and the United Kingdom and will commence thereafter with other countries as appropriate agreements for same are reached.

An extensive service and network description of DBS, its background and the public need which it will fulfill can be found in the supporting material filed in

Transmittal Letter No. 1073, dated September 24, 1976, with WUI's amendment to its Tariff F.C.C. No. 11 (Overseas Datel Service) which WUI incorporates herein by reference.* A brief recapitulation of that presentation follows.

Through the use of advanced data switching techniques and a volume-sensitive rate structure DBS will, for the first time, make available to communications users a high-quality, low-cost means of accessing overseas database and remote computing systems.

The public need for overseas remote computing involves requirements for in-house time sharing for large commercial customers for such applications as inventory control, order entry, billing, shipping, payroll, sales statistics, etc.

The availability of overseas data base access, or on-line information retrieval, will support such essential activities as inter-governmental technology transfer and public and private scientific and educational resource sharing. Thus, overseas entities will, through DBS, be able to access such major on-line information retrieval services in the U.S. as the National Library of Medicine's "Medline" service, Lockheed's "Dialog" service and System Development Corporation's "Orbit and Databasics" service. U.S. subscribers will have access to the smaller but growing number of overseas databases, the growth of which is expected to be stimulated by DBS.

---

*Additional information can be found in WUI's letters of October 1, 1976 and November 2, 1976 which WUI also incorporates herein by reference.

There is no question that DBS, which has been specially engineered for computer to computer and terminal to computer communications, will meet a heretofore unfulfilled need for a high quality service with rates which reflect the characteristics of an input/response service.

On the U.S. side access to DBS will be available both over the public switched telephone network and directly to WUI. WUI has contracted with Tymshare, Inc. to make DBS available to it and the 10,000 subscribers of Tymshare's joint-user network. Additionally, WUI is ready, willing and able, and has already publicly offered to interconnect with other U.S. entities on a non-discriminatory basis. Access in the United Kingdom will be via the public switched telephone network.

Customer access to DBS will be at speeds ranging from 110 to 1200 bits per second. The transatlantic facility will be an existing authorized undersea cable and will operate at 4800 bits per second.

The 12 month experimental period will meet the existing need for low-cost, high-quality access to database and remote computing systems and at the same time provide an opportunity for careful evaluation of DBS from the aspects of its continuation thereafter and possible follow-on data transfer services.

WUI considers DBS a major step forward in international telecommunications. At the recent International Computer Communications Conference, FCC Chariman Wiley stated:

> "It is now widely recognized that there exists in the economy of the United States a sizeable and growing "Information Sector."
>
> "This transformation to an information society has the potential, for good or naught, to affect all aspects of our daily lives--including our jobs, our education, our entertainment, our privacy, our political institutions, and ultimately our personal freedom as well. In sum, it can affect the very essence of the quality of life."

DBS supports and advances the "information explosion" by providing low cost and high quality communications service for such essential activities as intergovernmental technology transfer, public and private scientific and educational resource sharing and commercial computer time sharing.

In response to those parts of Section 63.01 of the Commission's Rules which may be applicable to a request for new service rather than new facility authority, WUI submits the following information in support of this application:

1. WUI, a corporation organized and existing under the laws of the State of Delaware, is a communications common carrier subject to Section 214 of the Communications

Act of 1934, as amended and an authorized carrier as defined in Section 103(7) of the Communications Satellite Act of 1962. WUI is engaged in furnishing international communications services throughout the world.

2. Correspondence concerning this application may be addressed to:

Kathryn E. McDonnell,
Attorney
Western Union International, Inc.
One WUI Plaza
New York, New York 10004

3. The grant of authority requested herein will not result in the extension of service to a point not now directly served by WUI, but will supplement WUI's existing authorized services as specified in the Commission's Order and Authorization, adopted April 8, 1964 (File No. I-T-C-1739 et al.) and supplemented thereafter from time to time.

4. In accordance with its existing agreement with the United Kingdom Post Office (UKPO), WUI will provide Database service for an experimental period of twelve months. The results of the experimental operation will determine whether WUI and UKPO will establish a permanent service at the end of that time frame. WUI expects to reach agreement and implement service with other foreign administrations.

5. WUI is not herein requesting authority to acquire additional facilities but will use its existing authorized facilities in the provision of DBS.

6. WUI hereby requests such appropriate modification of its existing authorizations as may be necessary to permit it to use its existing overseas facilities and connecting circuits for the provision of Database Service.

7. WUI will commence service between the U.S. and the United Kingdom using one previously authorized TAT-6 cable circuit and one fall-back circuit. Additional channels will be added as the demand requires.

8. The public need for DBS is discussed in the text preceeding the numbered paragraphs as well as in WUI's September 24 supporting materials and WUI's letters of October 1 and November 2, 1976. WUI and the UKPO are receiving requests from customers for the introduction of service as soon as possible and, accordingly, an expedient grant of this application will serve the public interest.

9. A detailed description of the DBS network and each element thereof is contained in WUI's September 24 supporting material. For the convenience of the Commission, WUI has reproduced and attached hereto Figure 1 showing the relationship of the various components of the network.

10. The charges and regulations under which DBS will be offered are those contained in WUI's amendment

to its Tariff F.C.C. No. 11 issued September 24, 1976 under Transmittal No. 1073 and any subsequent amendments or supplements thereto. Accounting will be performed in accordance with Part 35 of the Commission's Rules and Regulations.

11. WUI certifies that it has mailed a copy of this application to each party listed on pages 2 and 3 of the Commission's letter of August 30, 1973 to the overseas carriers regarding the revised procedures for processing applications for permanent and temporary authorizations and each party listed in Appendix A of that letter.

WHEREFORE, WUI respectfully submits that the public interest, convenience and necessity will be served by an early grant of this application.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Kathryn E. McDonnell
Attorney

One WUI Plaza
New York, New York 10004

Dated: November 9, 1976

Components of the DBS Network

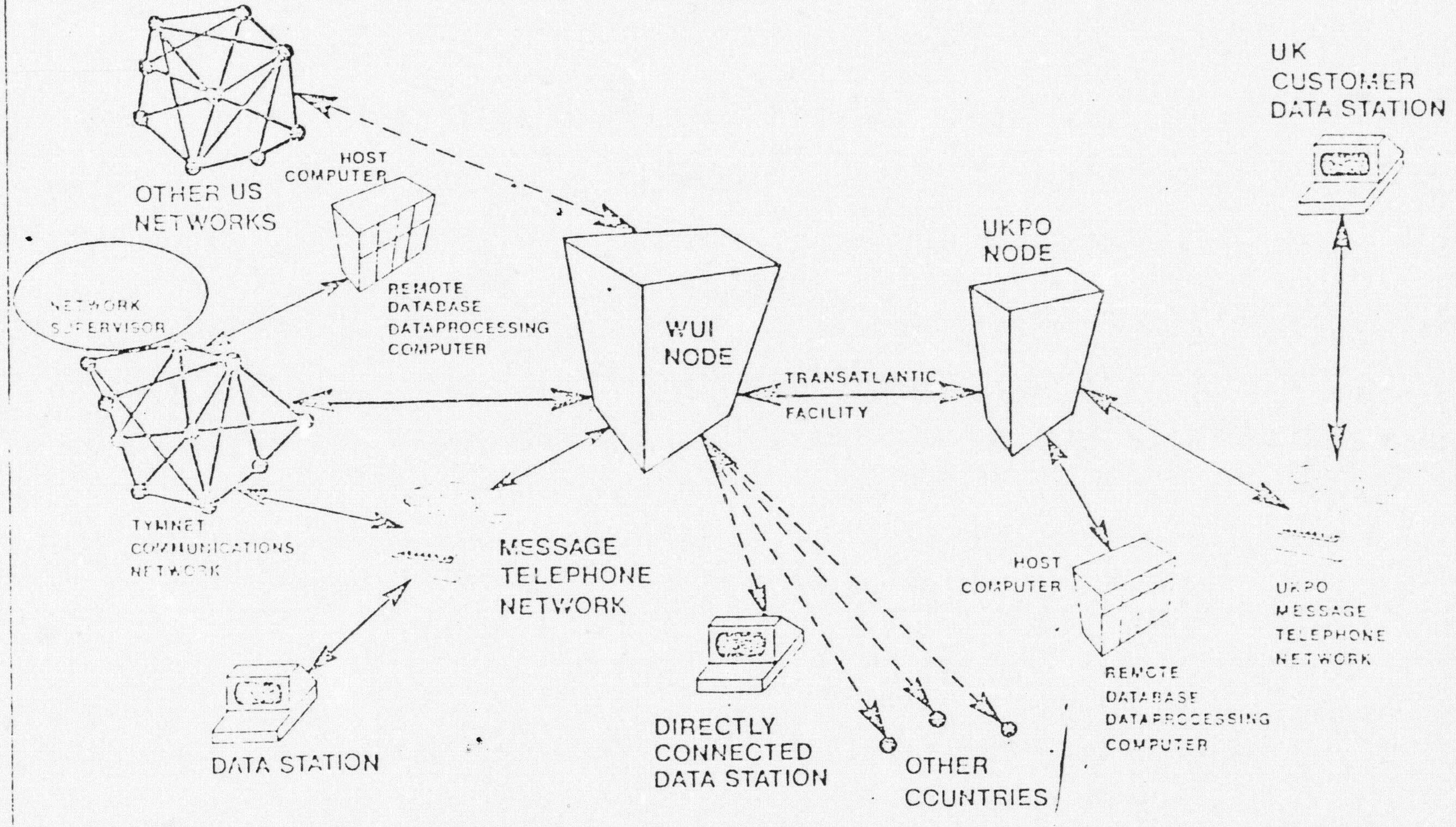

OTHER US
NETWORKS
HOST
COMPUTER
REMOTE
DATABASE
DATAPROCESSING
COMPUTER
NETWORK
SUPERVISOR
TYMNET
COMMUNICATIONS
NETWORK
MESSAGE
TELEPHONE
NETWORK
DATA STATION
WUI
NODE
TRANSATLANTIC
FACILITY
DIRECTLY
CONNECTED
DATA STATION
OTHER
COUNTRIES
UKPO
NODE
HOST
COMPUTER
REMOTE
DATABASE
DATAPROCESSING
COMPUTER
UK
CUSTOMER
DATA STATION
UKPO
MESSAGE
TELEPHONE
NETWORK

FIGURE 1

00514

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

IN REPLY REFER TO:
9420

RECEIVED
NOV 16 1976
M W K

Western Union International, Inc.
One WUI Plaza
New York, New York 10004

Attention: Robert Michelson, Esq.

Gentlemen:

This is in reference to your October 1, 1976 letter in which you indicate your belief that additional authority is not required under Section 214 of the Communications Act of 1934, 47 U.S.C. Section 214(a), to provide the "Database" service described in the Western Union International, Inc. Transmittal No. 1073 which would amend your Tariff F.C.C. No. 11 (Datel Service) effective December 22, 1976.

Based on your October 1 letter and conversations between members of the Commission's staff and your staff our understanding of your proposal is as follows: Database service would be used for communications between a terminal and a remote database computer or data processing computer. The service would involve the use of a node which would automatically connect communications from the proposed Tymnet network or other networks or from dedicated lines or dataphone calls to a TAT-6 circuit. The node would operate in a purely digital mode. In addition to providing an automatic switching function the node will provide a system for error checking for the communications between itself and a comparable node to be located in the United Kingdom and to be operated by the United Kingdom Post Office. The node has the capability to address communications so that the UK node will direct the communications to their proper destinations in the United Kingdom or another country. However, the capability to address information to locations other than in the United Kingdom would not be used. A form of time division multiplex would be used so that more than one customer's calls could be placed in what would be essentially a "simultaneous" fashion on the TAT-6 circuit. The WUI node would also receive communications from the UK node and sort them out for proper filing with the Tymnet network or another network or a dataphone subscriber. The Database system would not be used for the transmission of voice communications. The customer originating the call in the United States will be charged on both a time-usage basis and on the basis of a digital character count.

Datel service, like the proposed Database service, can be used to access remote computers. However it differs from Database in that Datel is also used for communications between two terminals. Datel involves the use of manual switching rather than automatic switching to connect the customer's call to an appropriate overseas line which at the overseas point is then interconnected with the local network to reach the desired terminal point. Unlike the proposed Database service, voice communication is used to cue the data transmission. Also unlike Database each Datel call involves the use of a dedicated overseas line for the specific customer for the duration of the call. Charging for a Datel call is on a time sensitive basis and does not involve charges on the basis of a digital character count.

We recognize that Datel and the proposed Database service share many characteristics. However, we find that because of the differences in the Database offering it constitutes a separate communications service which is not encompassed by your existing Section 214 authority. We are not herein finding that any one of the above described features of Database would warrant additional Section 214 authority. Rather, we find that collectively these features constitute a new service for which additional authority would be required. Accordingly, a formal application requesting appropriate modification of your existing authority should be filed.

Since the effective date of the Database tariff would not be until December 22, 1976, there is no cause to reject the tariff for lack of proper Section 214 authority at this time. However, if Section 214 authority is not forthcoming by that date the tariff will be rejected unless you have requested that the date of its effectiveness be extended.

Sincerely,

Walter Hinchman

Walter R. Hinchman
Chief, Common Carrier Bureau

cc: M.E. Hedborg
Edward P. Taptich, Esq.
Donald E. Ward, Esq.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re	)	
	)	
WESTERN UNION INTERNATIONAL, INC.	)	Transmittal No. 1073 of September 24, 1976
and	)	
	)	
WESTERN UNION INTERNATIONAL, INC.	)	File No.
	)	
Letter Request of October 1, 1976 for "Temporary Authority" to Offer "Database Service" (DBS) to the United Kingdom	)	

To: The Commission

REPLY

Telenet Communications Corporation (hereinafter Telenet) hereby submits its Reply to the November 2, 1976 letter filed by Western Union International, Inc. (WUI), in response to Telenet's October 18 "Petition to Reject and Deny" WUI's Transmittal No. 1073 of September 24, 1976, and its October 1, 1976 letter request for temporary authority to offer a new "Database Service" (DBS) to the United Kingdom.

I. Procedural Matters

At the outset, Telenet wishes to note its concern with the consistent failure of WUI to comply with well-established and commonly-understood Commission procedures, as set forth in the Commission's rules and regulations. WUI's November 2 letter is procedurally defective on multiple grounds.

Both Graphnet and Telenet filed formal Petitions to Deny WUI's application for temporary authority, in pleadings conforming with the requirements of §§1.47, 1.48, 1.49 and 1.51 of the Rules. In response, WUI has filed a letter which contains no proof of serv[illegible] as required by §1.47(g) and which was not in fact s[illegible]n counsel, despite the clear requirement of §1.47(d) [illegible]

> "When a party is represented by an attorney
> of record in a formal proceeding, service
> shall be made upon such attorney."

We trust that the foregoing comments will not be considered unduly pilpulistic. The recent recognition on the part of the Commission of the need for improved procedures with respect to the processing of international applications has led to the creation of a Special Task Force; see Public Notice of October 26, 1976. Therein, it was stated that "future pleadings will not be considered unless filed in conformance with the Commission's Rules." Thus, WUI's unauthorized letter-pleading should be disregarded.

One independent procedural matter also requires mention. On November 9, 1976, WUI filed a formal application under §214 of the Act, for a modification of its existing authorizations to provide the Database Service proposed in its September 24 tariff amendment and its October 1 letter request for temporary authority. (That application was not served on either Graphnet or Telenet, despite the fact that both were known parties-in-interest, as was apparent from their petitions directed to WUI's request for temporary authority.) While it is premature to address the merits of WUI's November 9 application, it is significant that WUI has now recognized the correctness of the arguments presented by ITT, Graphnet, and Telenet that it was procedurally and substantively inappropriate for WUI to attempt to offer a new service through the guise of a tariff amendment or through a "temporary" authorization.

WUI has apparently not seen fit to withdraw its September 24 transmittal of a proposed amendment to its Tariff FCC No. 11 or its October 1 request for temporary authority, although by its November 9 action it appears to have conceded the inappropriateness of its earlier filings. In order to eliminate any doubt as to its position, however, Telenet hereby reaffirms its October 18 Petition, and the position advanced there that WUI must proceed by way of formal application pursuant to §214 of the Act, and §63.01 of the Commission's Rules.

II. WUI Enjoys No Special Status

At page 3 of its November 2 letter, WUI appears to make the claim that, because it is an existing international record carrier, it enjoys a special and privileged status which permits it to expand its service offerings on an expedited basis while entities such as Graphnet or Telenet who propose similar overseas services are bound to follow a more elaborate and time-consuming procedure. It is difficult to imagine a more discriminatory procedure, and we are confident that the Commission will reject WUI's request for favored treatment. WUI's suggestion, on the one hand, that "the public interest would not be served by delaying the availability of DBS" (November 2 letter, page 5), while arguing, on the other, that the Telenet and Graphnet applications involve "questions of geographical expansion and certificate authority requiring careful scrutiny" (Id., page 3), is blatant hypocrisy.

III. The WUI-Tymshare Agreement Raises More Questions Than It Answers

Neither WUI's September 24 transmittal, nor its October 1 request for temporary authority, included copies of its underlying agreements with the BPO or Tymshare. In fact, WUI failed to mention any agreement with Tymshare, although it referred at several points to Tymnet. Thus, in "supporting material" to its September 24 transmittal, WUI claimed to have

> "arranged with Tymnet, Inc., to make the overseas service available to the 10,000 subscribers of Tymnet's U.S. network . . ." (Attachment 2, p. 1) 1/

1/ The "10,000 subscribers" claimed for "Tymnet's U.S. network" indicates either confusion or hyperbole on WUI's part. According to Tymnet's pending 214 application (W-P-C-927), there are 34 "joint users" on the network (Id., p. 10). In describing the data processing services of Tymshare, Inc., Tymnet's parent company, the applicant noted:

> "More than 10,000 individual users are served in some 4,000 customer organizations . . ." (Id., p. 6)

These "10,000 individual users" are clearly not "subscribers of Tymnet's U.S. Network" - and WUI's failure to distinguish between the two casts serious doubt upon its planning abilities.

A diagram of DBS Network Components included the "Tymnet Communications Network" (Figure 1 to Attachment 2). WUI's economic projections (Attachment 3) referred repeatedly to "Payout to Tymnet" (pp. 1,5, and 7).

The clear implication of these filings was that WUI and Tymnet had entered into a carrier-to-carrier type contract, premised on a forthcoming grant of Tymnet's pending application for domestic common carrier certification pursuant to §214. This implication caused both Graphnet and Telenet to devote extensive portions of their respective petitions to discussing the implications of an assumed contract between WUI and Tymnet of a carrier-to-carrier nature, and to observe that any favorable action on WUI's request was barred until grant of Tymnet's pending application.

Now the Commission is informed that WUI's agreement is not with Tymnet at all - it is with Tymshare - Tymnet's parent - which is portrayed by WUI "as a customer in its own right and as agent for those of its joint users wishing to go overseas" (November 2 letter, p. 2, FN**).

WUI states that although it "anticipates that its agreement with Tymshare, Inc. will be assigned to Tymnet, Inc. upon the latter's receipt of authority to acquire the communications network of Tymshare and operate as a common carrier, that agreement is not dependent upon such an occurence." (Ibid). WUI does not explain how a new carrier (Tymnet, Inc.) could simply step into the shoes of a "customer" (Tymshare, Inc.) as party to a customer-to-carrier contract without substantial modification. Moreover, there is no evidence of Tymshare's willingness to assign the agreement to Tymnet, nor of Tymnet's willingness to accept such an assignment.

If there is no assignment, the agreement as it stands presents serious questions as to its lawfulness under the Act. WUI's assertion that the "payout to Tymshare is merely a pass-through of the amounts Tymshare would have collected from its joint users on a domestic call to New York" (Ibid) is totally foreign to any bona fide joint use.[2/] The amounts involved - $10 per connect hour and $0.10 per 1,000 characters (see November 1 Tymshare letter attached to WUI's November 2 letter) - are identical to the proposed domestic tariff rates contained in the Tymnet §214 application (W-P-C-927, at p. 109), which have obviously been designed by Tymnet to permit it to realize a profit on the service.[3/] Yet profit

---

[2/] As pointed out in Telenet's October 18 Petition, Telenet has twice complained to the Commission concerning the offering by Tymshare of a data communications service in an unregulated fashion, through the guise of so-called "joint use". Both of these complaints are still pending before the Commission, and might eventually be mooted by action upon the later-filed 214 application of Tymnet, Inc. It is with some disappointment that we now learn that three months after the filing of that application by Tymnet, Tymshare by contract proposes to extend its illicit service internationally - and that in WUI's October 1 request for temporary authority the Tymshare role (as opposed to Tymnet) was not revealed. Telenet submits that the Commission should require far more forthrightness than has been exhibited by both WUI and Tymshare in this matter.

[3/] These rates are also identical to the "Hi Density" rates which Tymshare has been charging its customers during the recent past; See Appendix B to Attachment A to Exhibit 1 to Telenet's January 21, 1976 compaint concerning Tymshare's unauthorized activities.

as an incident to "joint use" (Tymshare's only justificaton for its current communications service) is precluded; See Resale and Sharing, 60 FCC2d 261, at 271-274.[4/]

WUI also fails to explain Tymshare's role as to traffic originating overseas and destined for a computer or terminal on the Tymshare network - projected by WUI to represent the bulk of the traffic. Even were "joint use" to justify the sharing of AT&T-supplied lines by Tymshare and its domestic customers, it is not available as a justification for the carriage over those lines of traffic originating abroad. As to such traffic, it would appear that some entity is engaged in "resale". Since neither Tymshare nor WUI has sought authority to resell AT&T lines between the WUI gateway and Tymshare customers located in the hinterland, the application cannot be considered until favorable action is taken upon Tymnet's application for domestic carrier status. Thus, while WUI may believe that its agreement with Tymshare "is not dependent upon" a grant of Tymnet's application and the assignment of the contract from Tymshare to Tymnet (November 2 letter, page 2), the fact is that in the absence of a 214-certificated domestic Tymnet service, WUI may not interconnect with Tymshare for the purpose of distributing inbound traffic to the hinterland.

[4/] "We define resale to be an activity wherein one entity subscribes to the communications service and facility of another entity and then reoffers communications service and facilities to the public (with or without 'adding value') for a profit." 60 FCC2d at 271.

". . . 'sharing' is a non-profit arrangement . . ." (Id., at 273).

Fortunately, the Commission now has before it a formal application from WUI for the proposed DBS service. Such application affords interested parties and the Commission the opportunity to explore in greater detail the ramifications of WUI's unusual agreement with Tymshare, without the artificial time constraints which WUI has sought to create through its premature and misleading filings of September 24 and October 1. Insofar as WUI's October 1 request for temporary authority is concerned, however, it is clear that the questions presented by the WUI-Tymshare agreement, involving unauthorized resale, potential rebates, and discriminatory treatment of customers[5/] - require denial of the request.

IV. The Truth About X.25

While the foregoing is dispositive of the WUI request for temporary authority, Telenet would be remiss if it left unchallenged WUI's claim that the X.25 standard recommended by Study Group VII of the CCITT and subsequently adopted by the CCITT Plenary Convention, in October 1976, is "applicable only to connecting a data terminal to a packet switching network [and] is not applicable to the internal operation of the network nor applicable to the interconnection of multiple networks."

[5/] See CBEMA Petitions for Suspension and Rejection of the WUI DBS Tariff, both filed November 4, 1976.

(November 2 letter, p. 4). WUI's assertion that "there is currently no agreed-upon recommendation applicable for the interconnection of international - let alone intercontinental - networks" (*Ibid*) bespeaks a unique form of myopia. If - as WUI suggests - X.25 is not applicable to interconnection of multiple and international networks, one must wonder why it was deemed necessary by an international body - the CCITT - to give any consideration to what WUI would pass off as a purely domestic matter.

To be sure, the X.25 interface specifically deals with the protocols and standards by which computers and terminals are to be interfaced with packet networks, but the significance of the international standardization of such an interface is that it permits network-to-network interconnection in a straightforward manner, without further adaptations.[6]

Telenet is not suggesting that because the WUI DBS proposal does not implement X.25, it may not be granted: Rather, Telenet merely suggests that WUI's invitation to Telenet to "interconnect with DBS" is a sham, and that the Commission should not be misled into the belief that WUI's DBS proposal is an adequate substitute for international packet switched service solidly based upon X.25 compatibility.

---

[5] See, as to this, "International Interconnection of Public Packet Networks", L.G. Roberts, *Proceedings of the Third International Conference on Computer Communications*, Toronto, 1976.

Wherefore, for the reasons set forth above and in Telenet's October 18 Petition, it is urged that the WUI September 24 Transmittal, and the WUI October 1 request for temporary authority, be dismissed.

Respectfully submitted.

TELENET COMMUNICATIONS CORPORATION

By:____________________
Philip M. Walker
Vice President and General Counsel
1050-17th Street, N.W.
Washington, D.C. 20036

By:____________________
Donald E. Ward
Law Offices of Donald E. Ward
1050-17th Street, N.W., Suite 840
Washington, D.C. 20036

November 12, 1976

Its Attorneys

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
(202) 296-1600

JAMES A. McKENNA, JR
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS N. FROHOCK
CARL R. RAMEY
EDWARD P. TAPTICH
PETER M. ANDERSEN
NORMAN P. LEVENTHAL
JAMES R. COOKE
STEVEN A. LERMAN
VIRGINIA S. CARSON
JOHN J. SMITH

November 17, 1976

Walter R. Hinchman, Chief
Common Carrier Bureau
Room 500
Federal Communications Commission
Washington, D. C. 20554

Re: Western Union International, Inc.
Database Service
Transmittal No. 1073

Dear Mr. Hinchman:

On September 24, 1976, Western Union International, Inc. (hereinafter "WUI"), filed the referenced tariff revisions. By letter dated October 1, 1976, WUI requested temporary certificate authority to provide the proposed tariffed services. And on October 15, 1976, Graphnet Systems, Inc., opposed WUI's October 1st request in a Petition to Deny.

In Graphnet's petition it was pointed out, among other things, that if the Commission determined that WUI required additional Section 214 authority, the tariffs filed October 1, 1976, would thereby be rendered prima facie unlawful, and rejection would be required. A letter to WUI from the Chief of the Common Carrier Bureau of November 12, 1976, however, states the following:

> Since the effective date of the Database tariff would not be until December 22, 1976, there is no cause to reject the tariff for lack of proper Section 214 authority at this time. However, if Section 214 authority is not forthcoming by that date the tariff will be rejected unless [WUI has] requested that the date of its effectiveness be extended.

There is, Graphnet believes, a serious question whether the basic conclusion not to reject the tariff "at this time" is legally correct. But beyond that question, there is an issue of fundamental fairness to other parties which the Bureau's statement ignores. The Commission's Rules prescribe particular timetables for the filing of pleadings directed to tariffs. In the case of tariffs filed on 60 (or more) days' notice, for example, Section 1.773(b) of the Commission's Rules requires that petitions for suspension be filed 35 days in advance of the tariffs' proposed effective date. And in the context of the referenced WUI tariff revisions, suspension requests would be due today.

Since the threshold question whether Section 214 authority will be granted WUI at all has not yet been resolved, Graphnet submits that it is grossly unfair to require it, or any other interested party, to devote the time and bear the expense of preparing formal, detailed objections to tariffs which may never become effective. Moreover, because of the entirely unclear nature of the WUI proposal -- particularly the nature of the WUI/Tymshare/Tymnet relationship -- it is far from certain that the final form of any implementing tariffs (assuming 214 authority is ultimately granted) will be the same as those filed by WUI in September.

In Graphnet's view, if WUI's tariffs are not now rejected, and if WUI is ultimately granted some form of 214 authority for its DBS service, all interested parties should be permitted a reasonable time thereafter to file either rejection or suspension requests directed to those tariffs. Only then will the dimension of WUI's authority be known, and only then can the tariffs -- perhaps modified in such form as WUI or the Commission may feel necessary -- be evaluated, and measured against the authorization granted. To the extent necessary to implement such an approach, the Commission should now waive the requirements of Section 1.773(b) of the Rules with respect to the captioned tariffs, and specify an alternative timetable -- one tied to the date of action on WUI's application for authority.

Respectfully submitted,

Edward P. Taptich

Edward P. Taptich
Counsel for Graphnet Systems, Inc.

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	)
	)
WESTERN UNION INTERNATIONAL, INC.	)
	)
Application for Temporary Authority, Pursuant to Section 214 of the Communications Act and Section 63.04 Of the Commission's Rules	))))

To: Chief, Common Carrier Bureau

REPLY ON BEHALF OF GRAPHNET SYSTEMS, INC.

Graphnet Systems, Inc. (hereinafter "Graphnet"), by its attorneys, hereby replies to the letter to the Commission from Western Union International, Inc. (hereinafter "WUI"), dated November 2, 1976, concerning the captioned matter.

Preliminary Statement

1. On September 24, 1976, WUI filed tariffs intended to implement its DBS service. On October 1, 1976, after a Commission Staff indication that Section 214 authority might be required to provide that service, WUI requested temporary authority to provide the service reflected in the tariffs. By Petition to Deny filed October 15, 1976, Graphnet requested that the request for temporary authority be denied. In its petition, Graphnet argued that, if Section 214 authority was determined to be required

for the proposed DBS service, the Commission should determine whether or not to grant such authority in the context of the statutorily prescribed procedures -- the filing of an appropriate application by WUI, publication of its receipt by the Commission, and an opportunity for public comment. Particularly because of the serious issues raised by the unclear and incomplete information submitted by WUI, Graphnet argued, a summary ignoring of such procedures was neither required nor appropriate. Basically, therefore, Graphnet's position was that, while a grant of the substantive authority requested might ultimately be indicated, the public was entitled to at least be made aware of the request, to review it, and to submit any pertinent views prior to Commission action. In addition, because of the serious factual and policy issues involved, Graphnet contended that hasty action, without the benefit of detailed comments and evaluation, was a wholly inappropriate approach to discharging the Commission's public-interest responsibilities.

2. With respect to the need to observe the usual Section 214 application procedures, WUI's response is contained in one footnote sentence:

> In view of the public interest favoring an early implementation of DBS, the Commission should give no weight to those arguments urging that DBS be treated only in the context of a formal application.

(WUI letter, p. 2, fn.)

Summary of Graphnet's Position

3. In its November 12, 1976 letter to WUI, the Bureau has ruled that additional Section 214 authority is required for WUI's provision of DBS service. And WUI has in fact now filed a formal application for such authority. In Graphnet's view, the sole question at this juncture is whether any summary grant of authority would be appropriate prior to a consideration of the formal application under normal procedures. In Graphnet's view, a grant of temporary authority now would be entirely inappropriate.

4. First, the reasons WUI initially advanced for ignoring the statutory procedures -- reasons WUI continues to rely on by reference -- were three:

> (i) the interests of international comity;
>
> (ii) the timely development and introduction of innovative data services in response to ever-evolving customer demands; and
>
> (iii) the ability of United States carriers to adequately influence the direction and nature of such services.

(WUI letter dated October 1, 1976, p. [illegible].) Those factors have already been addressed by Graphnet and Telenet, and Graphnet's discussion will not be repeated here. Suffice it to say at this point that, to the extent WUI has suggested that critical user requirements will go unserved unless the DBS service is immediately authorized, its position is vastly overstated. It is Graphnet's belief that Tymshare's services are now available in the United Kingdom. Appended hereto as Attachment A are certain Tymshare marketing materials which support that belief. While those materials are not entirely current, it is Graphnet's understanding based on more recent information that in fact Tymshare does serve the U.K. To that extent, WUI's interest is not in assuring users the immediate availability of services not otherwise available, but assuring only WUI's immediate participation in already existing service capabilities.

5. Second, the proposal continues to present issues inappropriate for summary disposition, and without the benefit of public comment. As the pleadings by Graphnet, Telenet and others have shown, such issues have existed from the outset. Contrary to WUI's gratuitous claim otherwise, and as discussed below, the information reflected in WUI's November 2, 1976, letter serves only to reinforce, not dispose of, the seriousness of those issues.

6. Accordingly, Graphnet submits that the only proper course at this point is to deny WUI's request for temporary authority, appropriately publish the filing of WUI's recent formal Section 214 application, and afford the public the opportunity for public comment the statute requires. Only at that juncture will the Commission be able properly to evaluate and act on the DBS proposal.

Discussion

A. Procedural Matters

7. On October 15, 1976, Graphnet filed a Petition to Deny the captioned request for temporary authority. Under Sections 1.4(g) and 1.45(a) of the Commission's Rules, any opposition to Graphnet's petition was required to be filed by October 28, 1976. To the extent WUI's November 2, 1976, letter purports to be such an opposition, and since WUI neither requested nor was granted an extension of the deadline, the filing is late, and should be disregarded.[1]

B. Substantive Considerations

8. In its petition, Graphnet pointed out that the proposed relationship between WUI and Tymnet was entirely unclear. And the nature of that relationship was shown to be highly important. For if the relationship was to be of a carrier-to-carrier sort,

---

[1] It should also be noted that counsel for Graphnet was not served a copy of WUI's November 2, 1976 letter, when it was filed. Rather, a copy was mailed to Graphnet's company location in Englewood, New Jersey -- a fact which delayed Graphnet counsel's receipt of the document until November 8, 1976. Compare Section 1.47(d): "When a party is represented by an attorney of record in a formal proceeding, service [of documents filed with the Commission] shall be made upon such attorney." For purposes of calculating the filing date of this reply under Section 1.45(b), Graphnet has considered November 8th as the filing date.

the WUI proposal was premature since Tymnet was not yet certificated. Moreover, if the arrangement was not to be an intercarrier one in nature, serious questions concerning WUI's "payouts" were raised.

9. The November 2 letter materials merely serve to cloud further, not only what the real relationship between WUI and Tymnet will be, but exactly with whom WUI will in fact be dealing. In the "Tariff Supporting Material" filed with WUI's September 24, 1976 Transmittal No. 1073, WUI stated that it had "arranged with Tymnet, Inc., to make the overseas service available to the 10,000 subscribers of Tymnet's U.S. network, which covers more than 60 cities, and the various databases and remote computing facilities served via Tymnet." (Attachment 2, p. 1; emphasis added.) Descriptions of the service included reference to "the closest Tymnet . . . node" (id. at 5), the "U.S. Tymnet System" (id. at 6), connection of WUI's node "to the U.S. Domestic Tymnet system" (id. at 8), "facilities . . . being supplied by Tymnet" (ibid.), graphic references to the "Tymnet Communications Network" (id. at fig. 1), and repeated references to "payouts to Tymnet" in the financial projections (Attachment III, pp. 2, 5, 7).

10. To avoid any confusion, WUI made clear in its September filing "[t]he term 'Tymnet' . . . refers to Tymnet, Inc." (Id. at 2.) Similarly, it was reported recently:

> Serge Wernikoff, vice-president of planning for Western Union International, said the firm recently filed a tariff for data base service (DBS) with the Federal Communications Commission (FCC). . . .

> Tymnet has subscribed to connect with the DBS, he added.

Computerworld, November 8, 1976, p. 28, col. 2. And in its November 12, 1976 letter to WUI, the Common Carrier Bureau stated its "understanding of [WUI's] proposal" -- "[b]ased on [WUI's] October 1 letter and conversations between members of the Commission's staff and [WUI's] staff" -- to "involve the use of a node which would automatically connect communications from the proposed Tymnet network . . . to a TAT-6 circuit. . . . The WUI node would also receive communications from the U.K. node and sort them out for proper filing with the Tymnet network. . . ." (Emphasis added.) The arrangement proposed by WUI, therefore, was one which clearly contemplated a direct operational relationship with Tymnet, right?

11. Wrong! In pleadings filed by Graphnet, Telenet and others, it was pointed out that the arrangement between WUI and Tymnet appeared to be a carrier-to-carrier sort. Yet Tymnet is merely an applicant for Section 214 authority, it was noted, without a prior grant of which the WUI/Tymnet arrangement could not lawfully be implemented. Sensitive to that deficiency in its proposal, WUI, in its November 2nd letter, now claims that its arrangement will really be with Tymshare, Inc., not Tymnet. Moreover, we are now told, "WUI is not dealing with Tymshare on a carrier-to-carrier basis but as a customer in its own right and as agent for those of its joint users wishing to go overseas." (WUI letter, p. 2.) Similarly, in its recent formal Section 214

application, the name Tymnet does not appear, WUI indicating instead that it has arranged "to make DBS available to [Tymshare, Inc.] and the 10,000 subscribers of Tymshare's joint user network." (WUI App., p. 3.)

12. In light of the foregoing, it is more unclear than ever who the real parties will be, and what role they will play. And until such matters are definitively established, the Commission simply cannot make any prudent public-interest judgment.

13. The November 2nd WUI materials likewise leave unanswered other issues raised earlier. In its October 15th petition, for example, Graphnet raised substantial questions concerning the consistency of the WUI/Tymshare (then thought to be the WUI/Tymnet) arrangements with the Commission's Computer Inquiry, Resale and international gateway policies, and also concerning the arrangements for non-discriminatory access to the service by other (including Graphnet) than Tymshare customers or Tymnet joint users. WUI has not addressed the Docket No. 20097 Resale issues which Graphnet has raised. Perhaps it assumes that a grant of Section 214 authority to Tymnet will obviate with them and that a grant is assured. But the WUI/Tymnet temporary authority, if granted, would not be a WUI/Tymshare grant, and WUI's contract is with Tymshare, not Tymnet. It is the Tymshare contract and the arrangements pursuant thereto which should be under consideration, and the Resale policies must be addressed in that context. And at such time as the Tymnet Section 214 application is being adjudged by the

Commission, a consideration of the relationship of Tymshare and Tymnet under the Resale policies may well be required.

14. The relationship problem is now deeper than Resale. The WUI/Tymshare relationship disclosed by the contract filed with WUI's November 2 letter includes the requirement that WUI must purchase a "Communication Processor" for $60,000, and that at least one more such processor must also be purchased by an European entity before the agreement is effective. Such an approach, of course, not only raises questions of undue discrimination and/or preference, but also poses issues of a possible anticompetitive practice of reciprocal dealing (whether coercive or otherwise is totally open at this point) under the doctrine of United States v. General Dynamics Corp., 258 F.Supp. 36 (1966). There is no immediate way of Graphnet's knowing what the market impact of any exclusionary arrangement would be, but at $60,000 a processor, it may be "not insubstantial."2/

15. The WUI/Tymshare relationship is also important in considering the international gateway policies. WUI claims there is no inconsistency between the proposed arrangement and these policies, for "[t]he inclusion of the price of the domestic call to WUI's gateway within the price of overseas DBS is similar to

---

2/ It is also of more than passing interest in this regard that, compared to the $60,000-per-unit contract price, WUI proposed to include in its rate base for each of the first three years of operation only $30,000 for the processor (September 24 filing, Att. III, pp. 8-9).

the pricing arrangement for overseas telex" (November 2 letter, p. 3, fn.*). This statement, however, does not address the consistency of the proposed arrangement with the Direct Free Access decision. See 40 F.C.C.2d 1082 (1973). If Tymnet were providing a joint through service with WUI, things might be different. But WUI notes in its November 2 letter that it is "not dealing with Tymshare on a carrier-to-carrier basis but as a customer in its own right and as agent for those of its joint users wishing to go overseas." This statement places Tymshare directly in the Resale situation and poses directly the Free Direct Access problem.

16. WUI also now states that "[t]he payout to Tymshare is merely a pass-through of the amounts Tymshare would have collected from its joint users on a domestic call to New York." What this means is a mystery -- one that is in no way clarified by the contract between Tymshare and WUI. Is WUI or Tymshare or both providing domestic service for the so-called "joint users"? What proportion of whose charge, or of what charge, is being "passed through," and by whom?

17. WUI also claims the Computer Inquiry policies are not involved because WUI is not engaged in data processing and because "WUI carries the data overseas in the same form it is received from its customers." (WUI letter, p. 3.) These assertions may be correct as conclusions; however, WUI has not sufficiently described what it does to demonstrate their correctness. Indeed, some of what it has said suggests it may be engaged in data processing.

For example, in its November 9 application it appears that access speeds to WUI's facilities are between 110 and 1200 bits per second. The transatlantic transmission is at 4800 bits per second. (WUI App., p. 3.) In addition, the contract with Tymshare indicates that WUI will be using a "Communication Processor" which includes a minicomputer with 24 K of main memory. (Attachment II, p. 5.) Speed conversion and memory are ample indications that WUI should come forward with a sufficient explanation of what it intends to do in its "node" to permit a determination to be made as to whether, indeed, the Computer Inquiry policies are being observed fully.

18. Finally, WUI claims it will permit interconnection with other U.S. entities on a non-discriminatory basis. (WUI App., p. 3.) Does this offer include an offer to purchase $60,000 worth of equipment from such other U.S. entity, and, if not, how can the arrangement in fact be "non-discriminatory"?

Conclusion

19. The foregoing is not intended to be a complete catalog of the questions which exist. Neither is it intended to indicate that some ultimate grant of authority to WUI may not ultimately be appropriate. What is intended, however, is to show that serious questions exist, and that such matters should not be considered and disposed of on a summary basis, particularly in the absence of an opportunity for public comment under the normal Section 214

processing requirements. In Graphnet's view, WUI's request for temporary authority should be denied, and the matter should be considered in the context of the formal application for authority now pending.

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

By Joseph M. Kittner, by EPT
Joseph M. Kittner

Edward P. Taptich
Edward P. Taptich

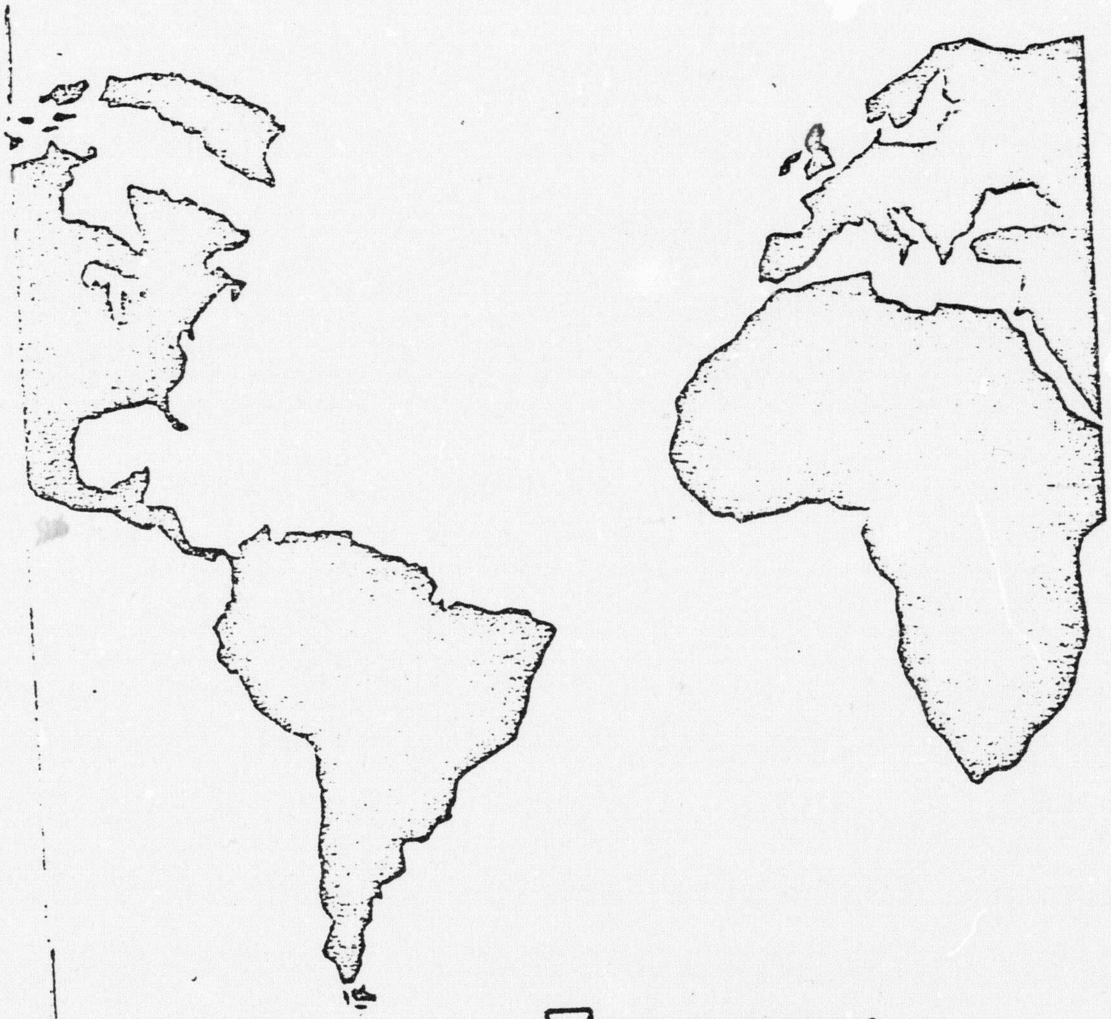
Peter M. Andersen, by EPT
Peter M. Andersen

McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

Its Attorneys

November 18, 1976

APPENDIX A



TYMSHARE®

International
Remote Computing Service

UNITED STATES (Continued)

	COMPUTER ACCESS	CUSTOMER SERVICE
TEXAS		
Dallas	214/638-5800	214/638-5860
Fort Worth	214/263-2419	214/638-5860
Houston	713/785-4411	713/785-3771
WASHINGTON		
Seattle	206/622-7930	206/623-8321

EUROPE

	COMPUTER ACCESS	CUSTOMER SERVICE	BUSINESS OFFICE
FRANCE			
Paris	602-5500	602-2600	602-2400

Service is now available anywhere in Europe via a long distance call to Paris. Future plans call for local service to be extended to the following cities:

AUSTRIA
  Vienna

BELGIUM
  Brussels

DENMARK
  Copenhagen

ENGLAND
  Birmingham
  London
  Manchester

FINLAND
  Helsinki

FRANCE
  Le Havre
  Lyon
  Marseille

GERMANY
  Düsseldorf
  Frankfurt
  Hamburg
  Hannover
  Munich
  Stuttgart

GREECE
  Athens

IRELAND
  Dublin

ITALY
  Milan
  Rome
  Turin

NETHERLANDS
  Amsterdam
  The Hague

NORWAY
  Oslo

PORTUGAL
  Lisbon

SCOTLAND
  Glasgow

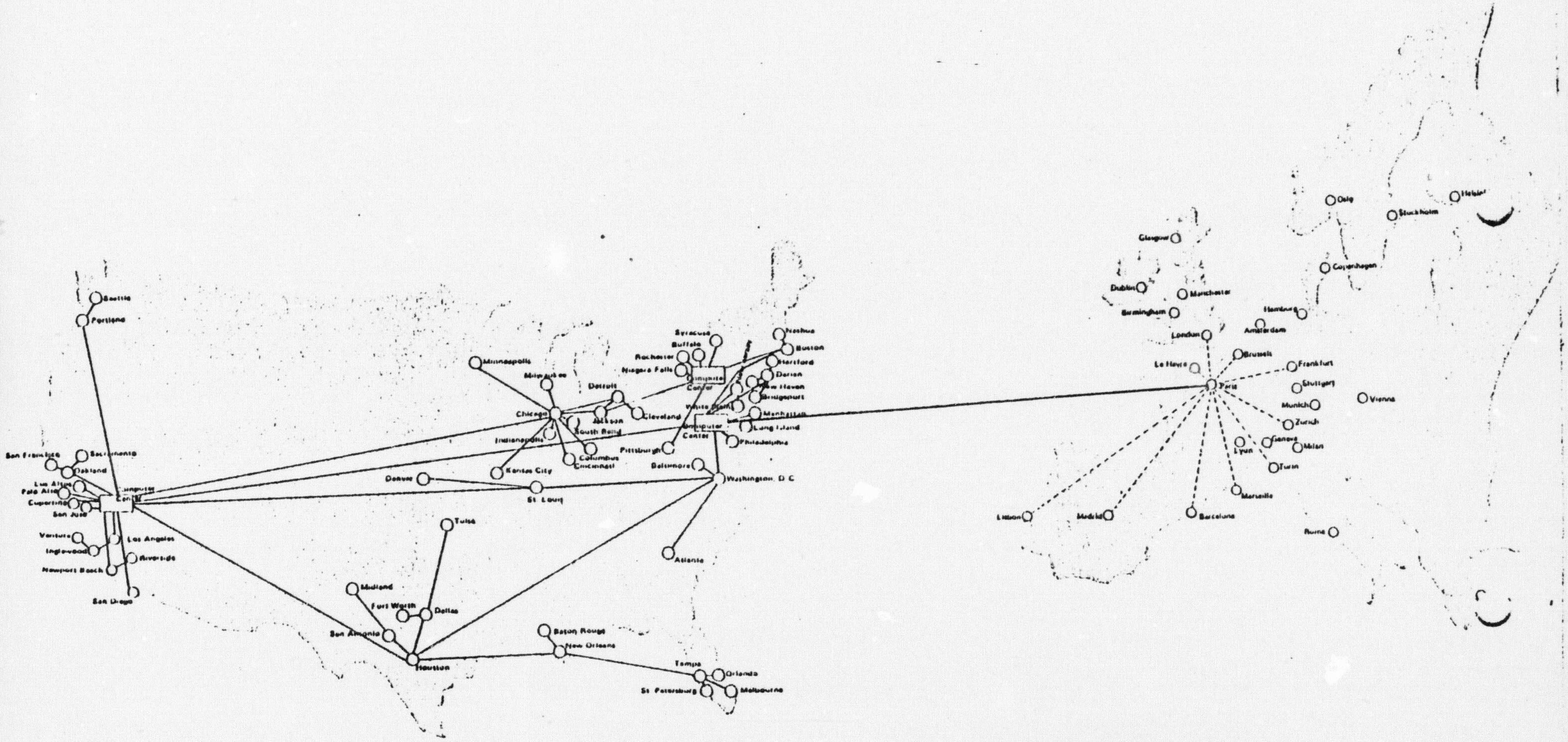
SPAIN
  Barcelona
  Madrid

SWEDEN
  Göteborg
  Stockholm

SWITZERLAND
  Basel
  Geneva
  Zurich

TYMSHARE'S INTERNATIONAL REMOTE COMPUTING NETWORK

(As of September 1972)

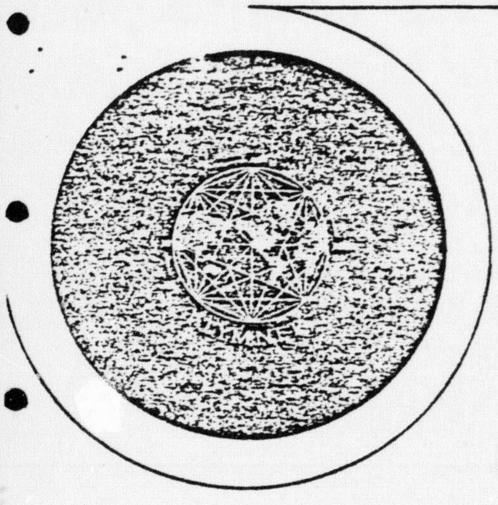

Seattle
Portland
San Francisco
Sacramento
Oakland
Los Altos
Palo Alto
Cupertino
San Jose
Computer Center
Ventura
Inglewood
Los Angeles
Riverside
Newport Beach
San Diego
Denver
St. Louis
Minneapolis
Milwaukee
Chicago
Detroit
Jackson
Cleveland
South Bend
Indianapolis
Columbus
Cincinnati
Kansas City
Syracuse
Buffalo
Rochester
Niagara Falls
Computer Center
Nashua
Boston
Hartford
Darien
New Haven
Bridgeport
White Plains
Manhattan
Long Island
Computer Center
Philadelphia
Pittsburgh
Baltimore
Washington, D.C.
Atlanta
Tulsa
Midland
Fort Worth
Dallas
San Antonio
Houston
Baton Rouge
New Orleans
Tampa
Orlando
St. Petersburg
Melbourne
Oslo
Stockholm
Helsinki
Glasgow
Copenhagen
Dublin
Manchester
Hamburg
Birmingham
Amsterdam
London
Brussels
Le Havre
Frankfurt
Paris
Stuttgart
Vienna
Munich
Zurich
Geneva
Lyon
Milan
Turin
Marseille
Lisbon
Madrid
Barcelona
Rome

TYMSHARE®

Local call access ————————

Long distance access - - - - - - - - -

00543



International Remote Computing Service

Companies with operations in both the United States and Europe now have available a service for the gathering, processing, and presentation of data essential to critical decision-making processes on a greatly reduced time scale.

Tymshare's international remote computing service is a decision-making tool which provides customers international access to common computers, programs, and data bases, as well as providing a vehicle for geographically dispersed data collection and consolidation. Key information from United States and European locations now can be available in one place on a real time basis. This consolidated, current information is then processed by Tymshare computers and presented in a variety of formats and reports, allowing the customer to perform timely and effective analyses of business operations on either or both continents.

Key benefits to customers using international service include:

- Convenient and economical transmission of data between headquarters and all field locations, provided by local-call access from most major cities in the United States and some cities in Europe.
- Critical information available from geographically dispersed locations on an up-to-the-minute basis.
- Access to a common data base which promotes a consistency of analysis for problems common to both United States and European operations.
- Assured high reliability of service for important customer projects, provided by an error-free data transmission system and multiple computer backup.

Other benefits available to Tymshare users include:

- An advanced, proven, and high-quality remote computer service.
- Total remote computing capabilities from a single source.
- Compatibility with a wide variety of terminal devices. The customer can use any of the commonly available terminals he may already have.
- Charges to customer only for service used. No capital investment costs or problems associated with management of data processing and telecommunications equipment.

To see how Tymshare's international remote computing service can work for you, just turn the page . . .

TYMSHARE® 10340 Bubb Road ■ Cupertino, California 95014 ■ 408/257-6550

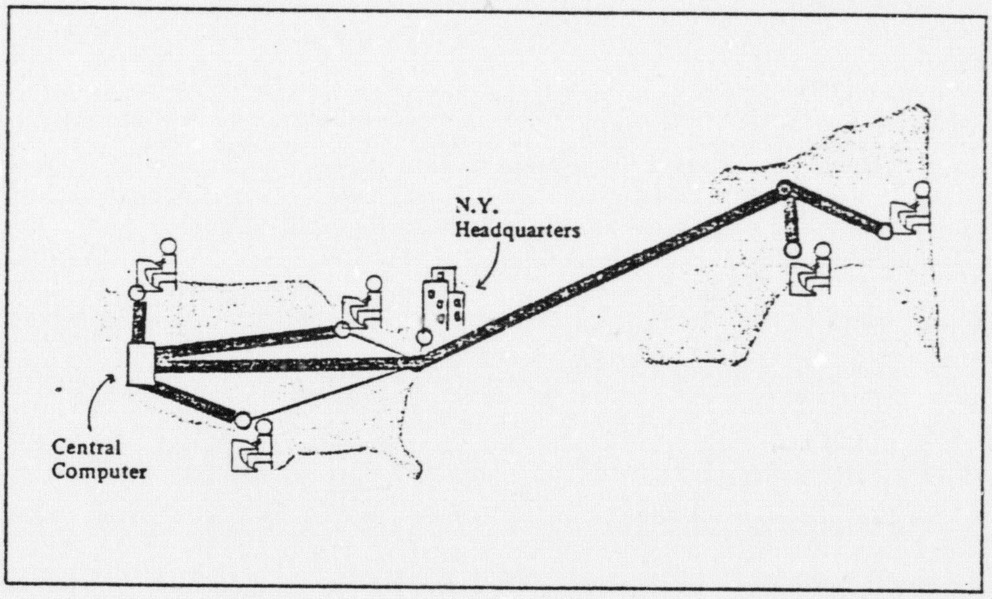
International Service In Action!

Shown below is an example of Tymshare's international remote computing service in action. An international company, in this instance having headquarters in New York, is shown using the system to keep track of its many United States and European operations. This example also illustrates the time compression features of the service for assisting management personnel in controlling their multinational operations. The sequence of events shown occurs within a single 24-hour period.

1

Monday (11 am EST, 8 am PST, 5 pm Europe)

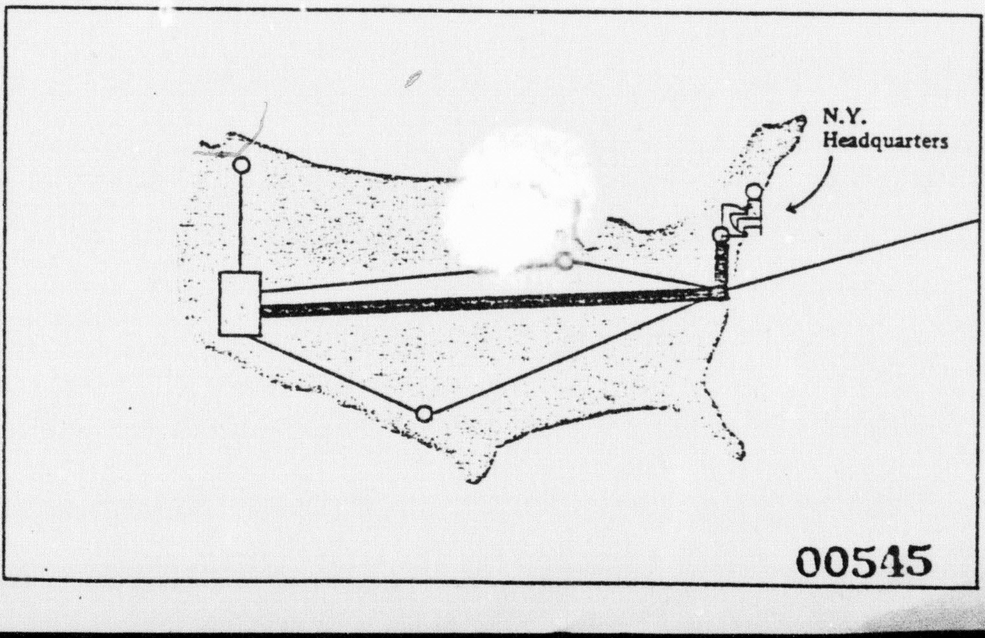
Data is entered from United States and European offices usually by a local telephone call into a Tymshare central computer. Data entry may take place at any time during the day and offices need not enter data simultaneously. Headquarters usually instructs each office to enter data before a certain time of day.



2

Monday (1 pm EST)

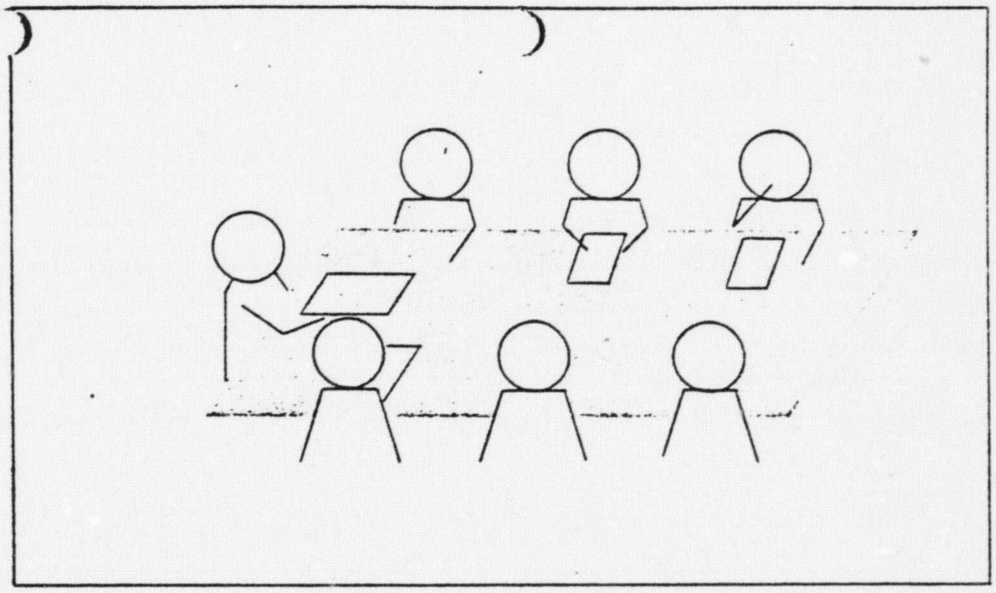
Data from the central computer is processed and reports are printed out at New York headquarters in formats specified by the customer company.



3

Monday (3 pm EST)

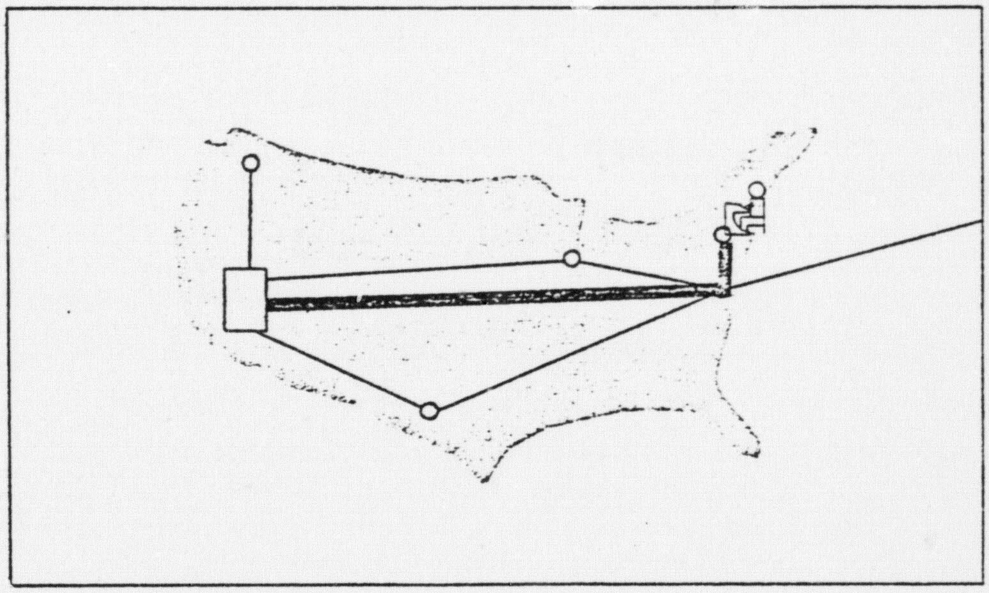
Key management personnel at headquarters study the information in the reports and discuss current problems and corrective actions regarding any of their multinational operations. Decisions can be made based on accurate and current information.



4

Monday (5 pm EST)

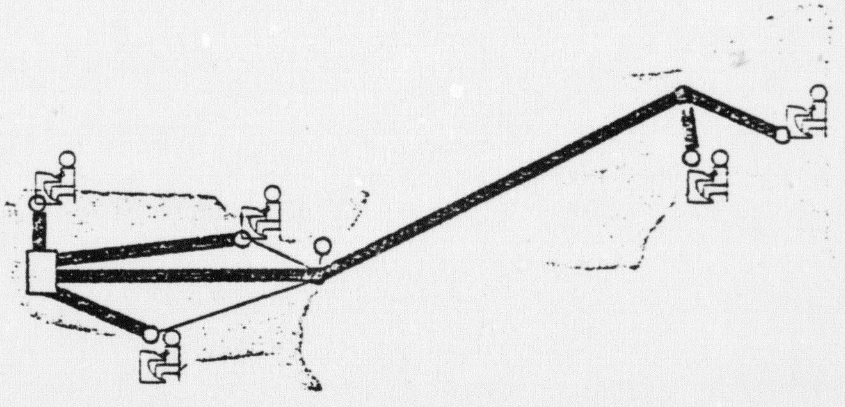
When decisions are made, headquarters personnel can insert new data in the central computer for processing and for selective availability to their offices in the United States and/or Europe.



5

Tuesday morning

Each United States and European office retrieves any data that is forthcoming from headquarters. Any new data the office might have available for processing can also be entered at this time.



Tymshare's international remote computing service is not limited to any single type of data or to any single type of application. At present, there are over 1500 customer organizations and over 10,000 individual user personnel using Tymshare's remote computing service for an extremely wide variety of applications. Some common application areas are:

Accounting

- Accounts receivable analysis
- Merger and acquisition analysis
- Budget forecasting
- Cash flow analysis and control
- Profit and loss analysis
- Cost analysis

Advanced Technology

- Profit and loss managing of projects
- Cost estimating
- Budget forecasting
- Modeling and simulation
- Design analysis
- Data reduction and plotting

Distribution

- Inventory analysis and control
- Product reordering control
- Cost and price analysis
- Delivery scheduling

Financial

- Portfolio analysis
- Cash flow analysis and control
- Return on investment analysis
- Revenue forecasting
- Profit and loss analysis
- Comparison of actual-to-budgeted performance

Manufacturing

- Cost analysis and control
- Production scheduling
- Parts control and ordering
- Price estimating

Marketing

- Price analysis
- Revenue forecasting
- Sales analysis
- Sales order entry

If you would like more information about what Tymshare service can do for you, contact any of the following locations. There is a Tymshare office in most major cities in the United States. In Europe, talk to the people at CEGOS-Tymshare.

INTERNATIONAL OFFICE

10340 Bubb Road
Cupertino, California 95014
408/257-6550

IN EUROPE

CEGOS-Tymshare
4 Bureaux de la Colline de St-Cloud
92 St-Cloud, France
602.24.00

REGIONAL SALES OFFICES

West
745 Distel Drive
Los Altos, California 94022
415/961-7331

East
90 Park Avenue, Suite 2401
New York, New York 10016
212/986-7540

Central
20 North Wacker Drive, Suite 830
Chicago, Illinois 60606
312/368-4545

Northeast
879 Hopkins Road
Williamsville, New York 14221
716/631-5400

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
WESTERN UNION INTERNATIONAL, INC.)
)
Application for authority to provide) FCC File No.
"Database Service" between the) I-T-C-2658
United States and the United)
Kingdom)
)
)
In the Matter of)
)
RCA GLOBAL COMMUNICATIONS, INC.)
)
Application for authority to provide) FCC File No.
an enhanced class of Overseas Datel) I-T-C-2657
Service (Datel II) between the)
United States and the Netherlands)

COMMENTS

Communications Satellite Corporation (Comsat) hereby provides the following Comments on the November 9, 1976 Application of Western Union International, Inc. (the "WUI Application") for authority to provide "Database Service" between the United States and the United Kingdom (FCC File No. I-T-C-2658), and the October 20, 1976 Application of RCA Global Communications, Inc. (the "RCA Application") for authority to provide

"Datel II" service between the United States and the Netherlands (FCC File No. I-T-C-2657).*/

1. In the above-captioned Applications WUI and RCA each propose to offer a so-called new "overseas data transmission capability not presently available to users in the U. S. and abroad" (RCA Application, p. 2) which will "meet a heretofore unfulfilled need for a high quality service with rates which reflect the characteristics of an input/response service" (WUI Application, p. 3).

2. In the case of WUI's Database Service (or "DBS"), the end-user is essentially offered the choice of a variety of low and medium speed channels (i.e., between 110 and 1200 bits per second (bps)) for switched data under a "volume sensitive rate structure" (WUI Application, p. 2). The transatlantic facility to be used for DBS, however, "will be an existing authorized undersea cable and will operate at 4800 bits per second" (WUI Application, p. 3). RCA's "Datel II," while similar in many aspects to "Database Service," is "designed to meet customer requirements for switched data at higher speeds (initially 4800 - 9600 bps)" (RCA Application, p. 2).**/

---

*/ The RCA and WUI Applications were placed on Public Notice on November 1, 1976 (Report No. I-285) and November 22, 1976 (Report No. I-291), respectively.

**/ The existing Datel offering (Datel I) was designed to handle switched data transmission at medium speeds of 1200 - 2400 bits per second (RCA Application, p. 2).

3. While Comsat welcomes the introduction of "Database Service" and "Datel II" type offerings, these offerings are neither as innovative nor as economical as they might be. By Application filed with the Commission on April 14, 1975 (FCC File No. I-P-C-7901-8), Comsat requested Commission authority to offer to the international carriers a digital data communications satellite service, commonly referred to as Digisat, between the United States and various points in the Atlantic Ocean Region of the INTELSAT system -- including those points which would be served by Database and Datel II. Digisat would offer the international record carriers (the IRCs) -- and, therefore, their end-users -- a variety of low, medium and high speed data channels (i.e., 2400, 4800 and 9600 bps and 50 kb/s channels) which could be subdivided and shared by the IRCs at substantially reduced rates to both the IRCs and their customers.

4. Digisat is a natural predecessor to Datel II and Database. However, the Digisat Application has never been acted on by the Commission and, in fact, has languished before it unopposed for over a year and half. The public, therefore, has never reaped its economic and service advantages.

5. The economic advantages of Digisat have already been demonstrated in the costing of services between the United States Mainland and Hawaii, where Digisat has already been approved by the Commission.*/ Prior to Digisat the IRCs, using the conventional FDM subdivision techniques to derive 24 telegraph grade channels from a voice grade circuit, were leasing 75 baud channels to the public for approximately $1,500 a month. With the advent of Digisat on this route, making it possible for the carriers to derive a significant number of additional medium and low speed channels from a single 50 kbps high speed channel, the through rate to the general public was reduced from $1,500 to $225 per month, or approximately 85 percent. While the magnitude of the price reduction to the public in the Atlantic will depend to a large extent on whether the carriers will make extensive use of Comsat's Digisat service instead of their own cable offerings, and on whether the reduced cost of the Digisat Service is "flowed-through" to the end-user or absorbed in part by the IRCs, the savings to result from a Digisat offering should be substantial.

---

*/ See, Memorandum Opinion, Order and Authorization (FCC 75-33) released January 22, 1975 in FCC File No. I-P-C-7903-5 *et al.* authorizing Digisat in the Pacific Region.

6. Under these circumstances, the public interest would appear to require a prompt Commission grant of Comsat's Digisat Application, particularly when one considers that the Commission granted WUI's Application for IDDS Service (which, like Digisat, was designed to appeal to the competitive data market) over a year ago and both the Atlantic Digisat and IDDS Applications were filed within several months of each other.*/

Accordingly, in order to ensure that the benefits of Digisat are realized, Comsat respectfully requests that action be deferred on RCA's and WUI's Applications for permanent authority to provide Datel II and Database Service, respectively, in the Atlantic Region pending Commission action on Comsat's underlying Application to provide Digisat Service in this Region.

Respectfully submitted,

COMMUNICATIONS SATELLITE CORPORATION

By /s/ William K. Coulter
William K. Coulter

Its Attorney
950 L'Enfant Plaza, S. W.
Washington, D. C. 20024

Date: November 24, 1976

---

*/ WUI's Application for Atlantic IDDS (FCC File No. I-T-C-1896-41) was filed on February 27, 1975 and granted by the Commission on November 18, 1975. Comsat's Atlantic Digisat Application (FCC File No. I-P-C-7901-8) was filed with the Commission on April 14, 1975 yet is still pending.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
WESTERN UNION INTERNATIONAL, INC.)
)
Application for authority to provide) FCC File No.
"Database Service" between the) I-T-C-2658
United States and the United)
Kingdom)
)
)
In the Matter of)
)
RCA GLOBAL COMMUNICATIONS, INC.)
)
Application for authority to provide) FCC File No.
an enhanced class of Overseas Datel) I-T-C-2657
Service (Datel II) between the)
United States and the Netherlands)

COMMENTS

Communications Satellite Corporation (Comsat) hereby provides the following Comments on the November 9, 1976 Application of Western Union International, Inc. (the "WUI Application") for authority to provide "Database Service" between the United States and the United Kingdom (FCC File No. I-T-C-2658), and the October 20, 1976 Application of RCA Global Communications, Inc. (the "RCA Application") for authority to provide

"Datel II" service between the United States and the Netherlands (FCC File No. I-T-C-2657).*/

1. In the above-captioned Applications WUI and RCA each propose to offer a so-called new "overseas data transmission capability not presently available to users in the U. S. and abroad" (RCA Application, p. 2) which will "meet a heretofore unfulfilled need for a high quality service with rates which reflect the characteristics of an input/response service" (WUI Application, p. 3).

2. In the case of WUI's Database Service (or "DBS"), the end-user is essentially offered the choice of a variety of low and medium speed channels (i.e., between 110 and 1200 bits per second (bps)) for switched data under a "volume sensitive rate structure" (WUI Application, p. 2). The transatlantic facility to be used for DBS, however, "will be an existing authorized undersea cable and will operate at 4800 bits per second" (WUI Application, p. 3). RCA's "Datel II," while similar in many aspects to "Database Service," is "designed to meet customer requirements for switched data at higher speeds (initially 4800 - 9600 bps)" (RCA Application, p. 2).**/

---

*/ The RCA and WUI Applications were placed on Public Notice on November 1, 1976 (Report No. I-285) and November 22, 1976 (Report No. I-291), respectively.

**/ The existing Datel offering (Datel I) was designed to handle switched data transmission at medium speeds of 1200 - 2400 bits per second (RCA Application, p. 2).

3. While Comsat welcomes the introduction of "Database Service" and "Datel II" type offerings, these offerings are neither as innovative nor as economical as they might be. By Application filed with the Commission on April 14, 1975 (FCC File No. I-P-C-7901-8), Comsat requested Commission authority to offer to the international carriers a digital data communications satellite service, commonly referred to as Digisat, between the United States and various points in the Atlantic Ocean Region of the INTELSAT system -- including those points which would be served by Database and Datel II. Digisat would offer the international record carriers (the IRCs) -- and, therefore, their end-users -- a variety of low, medium and high speed data channels (i.e., 2400, 4800 and 9600 bps and 50 kb/s channels) which could be subdivided and shared by the IRCs at substantially reduced rates to both the IRCs and their customers.

4. Digisat is a natural predecessor to Datel II and Database. However, the Digisat Application has never been acted on by the Commission and, in fact, has languished before it unopposed for over a year and half. The public, therefore, has never reaped its economic and service advantages.

5. The economic advantages of Digisat have already been demonstrated in the costing of services between the United States Mainland and Hawaii, where Digisat has already been approved by the Commission.*/ Prior to Digisat the IRCs, using the conventional FDM subdivision techniques to derive 24 telegraph grade channels from a voice grade circuit, were leasing 75 baud channels to the public for approximately $1,500 a month. With the advent of Digisat on this route, making it possible for the carriers to derive a significant number of additional medium and low speed channels from a single 50 kbps high speed channel, the through rate to the general public was reduced from $1,500 to $225 per month, or approximately 85 percent. While the magnitude of the price reduction to the public in the Atlantic will depend to a large extent on whether the carriers will make extensive use of Comsat's Digisat service instead of their own cable offerings, and on whether the reduced cost of the Digisat Service is "flowed-through" to the end-user or absorbed in part by the IRCs, the savings to result from a Digisat offering should be substantial.

---

*/ See, Memorandum Opinion, Order and Authorization (FCC 75-33) released January 22, 1975 in FCC File No. I-P-C-7903-5 *et al.* authorizing Digisat in the Pacific Region.

6. Under these circumstances, the public interest would appear to require a prompt Commission grant of Comsat's Digisat Application, particularly when one considers that the Commission granted WUI's Application for IDDS Service (which, like Digisat, was designed to appeal to the competitive data market) over a year ago and both the Atlantic Digisat and IDDS Applications were filed within several months of each other.*/

Accordingly, in order to ensure that the benefits of Digisat are realized, Comsat respectfully requests that action be deferred on RCA's and WUI's Applications for permanent authority to provide Datel II and Database Service, respectively, in the Atlantic Region pending Commission action on Comsat's underlying Application to provide Digisat Service in this Region.

Respectfully submitted,

COMMUNICATIONS SATELLITE CORPORATION

By /s/ William K. Coulter
William K. Coulter

Its Attorney
950 L'Enfant Plaza, S. W.
Washington, D. C. 20024

Date: November 24, 1976

---

*/ WUI's Application for Atlantic IDDS (FCC File No. I-T-C-1896-41) was filed on February 27, 1975 and granted by the Commission on November 18, 1975. Comsat's Atlantic Digisat Application (FCC File No. I-P-C-7901-8) was filed with the Commission on April 14, 1975 yet is still pending.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

RCA GLOBAL COMMUNICATIONS, INC.

Application for such modification of its existing authorizations under Section 214 of the Communications Act of 1934, as amended, as may be necessary to use its previously authorized overseas communications facilities for the provision of an enhanced class of Overseas Datel Service (Datel II).

File No. I-T-C-2657

COMMENTS

American Telephone and Telegraph Company (AT&T) hereby submits its Comments with respect to the Application of RCA Global Communications, Inc. (RCA) for authorization to use its overseas communications facilities for the provision of an enhanced class of overseas Datel Service called Datel II. In support of its Comments, AT&T respectfully shows:

1. RCA requests the Commission to authorize the provision of an enhanced overseas Datel Service (Datel II) which will increase the operating speeds of its present Datel Service offering to a range of 4800 bits per second (bps) to 9600 bps. Datel II is designed to provide access from both digital and analog domestic networks.* Initially, however, access will be provided by dedicated facilities and, at an unspecified date, access will be provided "through appropriate

---

* Application, para. 9, p. 6.

interconnections with domestic networks."*

2. Although RCA's Application fails to adequately describe the manner of interconnection with domestic networks, AT&T reiterates its opposition to any interconnection proposal which contemplates so-called "operational and financial parity" as previously described by RCA.** Furthermore, AT&T submits that basic fairness dictates that RCA's Application should not be granted until the Commission has acted upon AT&T's Application for authority to permit the use of the Message Telecommunications Service (MTS) network for DATAPHONE*** transmission to overseas points. In this regard, AT&T questions the appropriateness of the temporary grant of authority issued by the Commission to RCA for the provision of Datel II.

AT&T Opposes Any Interconnection Requirements Which Seek "Operational And Financial Parity".

3. RCA's Application states that customers of RCA will be able to access Datel II by dedicated lines and "at an early date through appropriate interconnections with domestic networks".**** The Application also states that Datel II is designed "with the capability to be expanded to provide access from domestic switched digital or analog networks.*****

---

* *Id*. at p. 2

** See RCA letter dated June 14, 1976 to Vincent J. Mullins Re: RCA Transmittal No. 4139, Attachment, p. I-3; RCA Application No. 1435 dated July 14, 1976. See also, RCA letter dated May 21, 1976 to Vincent J. Mullins, Comments on Interconnection of RCA Global Communications, Inc., dated April 9, 1976.

*** DATAPHONE is a registered trademark of the AT&T Co.

**** RCA Application, p. 2. See also RCA letter dated September 28, 1976 to Vincent J. Mullins.

***** *Id*. at para. 9, p. 6.

RCA does not describe the nature of this access although in its amended tariff filing for Datel I, it speaks of interconnection in terms of "technical and operational parity."*

4. The Commission's Order in Docket No. 19558** instructed the international record carriers (IRCs) to file pleadings "regarding what facilities and interconnections, not presently provided, are necessary for their proposed [enhanced data] services".*** The Commission also stated that interconnection should be "pursuant to [the Commission's] policies established for domestic common carriers".****

5. In response to this directive, RCA, in addition to the other IRCs, filed Comments which advanced demands not merely for interconnection, but for total integration of their facilities into the overseas MTS network. AT&T's Reply and informal discussions with the IRCs demonstrated the complete infeasibility of RCA's "parity" approach, its harmful impact on AT&T's service requirements and the total absence of any support for these demands in the Commission's Order.

6. AT&T stands ready to afford RCA and the other IRCs interconnection pursuant to the Commission's policies established for domestic common carriers and is prepared to enter into meaningful discussions toward this end. However,

---

* See RCA letter dated June 14, 1976, supra n. **, p. 2.

** 57 F.C.C. 2d 705 (1976).

*** Id. at 711.

**** Id.

AT&T is opposed to any proposal which looks toward the integration of RCA's facilities into the overseas MTS network as previously demanded by RCA.

It Would Be Manifestly Unfair For The Commission To Permit RCA To Offer Datel II Until It Acts Upon AT&T's Application For Dataphone Transmission To Overseas Points.

7. On April 9, 1976, AT&T filed its Section 214 Application for appropriate modification of existing authorizations to permit the use of the MTS network for DATAPHONE transmission to overseas points. RCA requested the Commission to withhold acceptance of the Application until AT&T had met RCA's interconnection demands.*

8. Despite RCA's request, the Commission accepted AT&T's Application for filing on June 14, 1976 and RCA again opposed AT&T's Application arguing that "the new data offerings [should] be inaugurated on a fair and proper footing."**

9. In AT&T's view, it would be unfair to grant RCA's instant Application while at the same time deferring action on AT&T's Application which has been on file with the Commission for a period of over five months. In view of RCA's consistent requests to the Commission to withhold action on AT&T's Application until the Commission has ruled on RCA's interconnection demands and that new data offerings "be inaugurated on a fair and proper footing", basic fairness would require similar treatment regarding RCA's Application.

---

* RCA letter dated May 21, 1976 to Vincent J. Mullins.

** Reply of RCA Global Communications, Inc., File No. I-P-C-12, dated August 31, 1976, p. 13.

10. Moreover, AT&T questions the appropriateness of the grant of temporary authority by the Commission to RCA for the provision of Datel II in light of the Commission's Order in Docket No. 19558 and AT&T's pending Application. RCA's Application for Datel II was initially filed in the form of a tariff amendment.* On September 28, 1976, RCA requested temporary authorization for the provision of Datel II pursuant to Section 63.04 of the Commission's Rules and Regulations. This request was granted on October 6, 1976.

11. The Commission's Order in Docket No. 19558 stated that present authorizations to the IRCs preclude use of their facilities for "dataphone type" services, that their currently authorized services include "Datel ... at speeds up to 1200 bits per second",** "that it would be in the public interest for the IRCs to expand their switched record services, such as Datel ..."*** and directed the Chief of the Common Carrier Bureau to accept applications from the IRCs for their enhanced Datel services in accordance with the Order.****

12. The Commission also required AT&T to file a Section 214 Application if it wished to permit its customers to use its overseas MTS network for DATAPHONE calls. As stated previously, AT&T complied with this requirement, the Commission

---

* Transmittal No. 4139 dated April 13, 1976.

** 57 F.C.C. 2d at 705.

*** *Id.* at 709.

**** *Id.* at 712. In spite of this clear and unequivocal language, RCA originally sought authority to offer Datel II, an enhanced data service, by merely filing a revision of its existing Datel tariff.

placed AT&T's Application on Public Notice and the IRCs have had an opportunity to comment on AT&T's Application. By contrast, RCA's request for temporary authority was not placed on Public Notice and interested parties were not given an opportunity to submit comments thereby restricting the procedural rights of other carriers.*

13. AT&T questions the propriety of these actions and requests that the Commission should either remove its grant of temporary authority for Datel II service or authorize AT&T to permit its customers to use the overseas MTS network for DATAPHONE transmission.**

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By Edgar Mayfield
Edgar Mayfield

By
Alfred G. Walton

By
Randall B. Lowe

Its Attorneys
32 Avenue of the Americas
New York, New York 10013

Dated: December 1, 1976

---

* Similarly, RCA has also filed a tariff amendment for the provision of Datel I to "establish higher quality service to meet current needs" by increasing the operating speed from 1200 bps to 2400 bps and to "propose rates which are competitive with the overseas telephone rates of AT&T." In support of this enhanced data service, RCA cited the Commission's decision in Docket No. 19558. AT&T submits that this tariff amendment seeks to bypass the Commission's express mandate in Docket No. 19558 and that Datel I must be inaugurated by filing a Section 214 Application.

** In conformity with its Order in Docket No. 19558, AT&T also believes the Commission should direct RCA to file a Section 214 Application for the provision of Datel I, an enhanced data service.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of WESTERN UNION INTERNATIONAL, INC. Request for temporary authorization under Section 214 of the Communications Act of 1934, as amended, to use its previously authorized facilities for the provision of Database Service between points in or reached via the United States Mainland, on the one hand, and the United Kingdom, on the other hand.	Transmittal No. 1073

PETITION TO DENY

American Telephone and Telegraph Company (AT&T) hereby submits its Petition to Deny the request of Western Union International, Inc. (WUI) for temporary authorization to use its facilities for the provision of an enhanced class of overseas Datel Service called Database Service between the United States and the United Kingdom. In support of its Petition, AT&T respectfully states:

1. On September 24, 1976, WUI submitted to the Commission for filing revised pages to its Tariff F.C.C. No. 11 wherein it sought to offer an enhanced version of its

overseas Datel Service - called "Data Base Service" or "DBS" - by providing access for "communications to and from data base computers and remote computing services between the United States and the United Kingdom".* WUI's amendment also sought to increase the speed of this service to 2400 bits per second "to meet recent competitive filings".**

2. The Commission informally notified WUI that the introduction of DBS would necessitate the filing of a Section 214 application. On October [illegible] 1976,*** WUI requested a waiver of Section 214 requirements arguing that DBS is merely a class of traditional Datel Service provided over previously authorized facilities. In the alternative, WUI asked the Commission to treat its filing as a Section 214 application contending that the tariff amendments contained all of the required information and supporting data. However, if the Commission determined that additional authority was required, WUI requested temporary authority pursuant to Section 63.04 of the Commission's Rules for a period of one year. In such event, WUI stated that it would promptly file a

---

* WUI Transmittal No. 1073, dated September 24, 1976, p. 1.

** _Id_. at p. 2.

*** WUI letter to Vincent J. Mullins re: Transmittal No. 1073, dated October 1, 1976 formal Section 214 application.*

3. In AT&T's view, the Commission's Order in Docket No. 19558** bars a request for temporary authority to provide an enhanced Datel Service such as DBS and requires the filing of only formal Section 214 applications.

4. The Commission's Order in Docket No. 19558 stated that present authorizations to the International Record Carriers (IRCs) preclude use of their facilities for "dataphone type" services, that their currently authorized services include "Datel... at speeds up to 1200 bits per second",*** "that it would be in the public interest for the IRCs to expand their switched record services, such as Datel..."**** and directed the Chief of the Common Carrier Bureau to accept applications from the IRCs for their enhanced Datel services in accordance with the Order.*****

---

* Although WUI filed a formal Section 214 application on November 9, 1976, there is no indication that it has withdrawn its request for temporary authority.

** 57 F.C.C. 2d 705 (1976).

*** Id. at 705.

**** Id. at 709.

***** Id. at 712. WUI's proposal includes features that the IRCs proposed in Docket No. 19558 e.g., increased transmission speeds and code and character conversion, for which the Commission held they must file Section 214 applications.

5. In the face of this clear and unequivocal language, WUI presently seeks to offer an enhanced Datel Service, albeit temporarily, by merely filing a revision of its existing Datel tariff and then amending the nature of the filing to an informal request for temporary authority.

6. It is noteworthy that the Commission also required AT&T to file a formal Section 214 Application if it was to permit its customers to use its overseas Message Telecommunications Service (MTS) network for DATAPHONE* calls. AT&T complied with this requirement, the Commission placed AT&T's Application on Public Notice and the IRCs have had an opportunity to comment on AT&T's Application.

7. By contrast, WUI seeks to bypass the Commission's procedures. By filing a tariff amendment and then amending it to a request for temporary authority it avoids the Commission's express mandate in Docket No. 19558 that only Section 214 applications will be considered. In addition, neither its tariff amendment nor the supportive information upon which the request is based was served on other carriers in accordance with the Commission's informal procedures regarding Section 214 applications and did not go on Public Notice thereby restricting the procedural rights of other carriers. At the very least,

---

* DATAPHONE is a registered trademark of the AT&T Co.

the Commission should restrict WUI to its presently filed Section 214 application so that other parties may scrutinize its showing and comment upon that showing if appropriate.

8. Moreover, WUI seeks temporary authority pursuant to Section 63.04 of the Commission's Rules to provide DBS on an experimental basis for the period of one year. Section 63.04 does not contemplate such a request and specifically defines "temporary service" as a period not to exceed six months.

9. In any event, WUI's request should not be granted until the Commission is prepared to act on AT&T's Application for authority to permit its customers to use overseas MTS for DATAPHONE calls. In this regard AT&T notes that the IRCs have opposed its June 14, 1976 Application to permit its customers to use overseas MTS for DATAPHONE calls and that the Commission has taken no action on this Application although six months have passed. It would be manifestly unfair for the Commission to permit WUI to offer its enhanced Datel service until it acts upon AT&T's parallel application relating to DATAPHONE transmission on MTS.

10. AT&T merely requests that the Commission place the same requirements on WUI as it has on AT&T

and the other IRCs as ordered in Docket No. 19558. Accordingly, WUI's request for temporary authorization should be denied.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPAN

By Edgar Mayfield
Edgar Mayfield

By
Alfred G. Walton

By
Randall B. Lowe

Its Attorneys
32 Avenue of the Americas
New York, New York 10013

Dated: December 10, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of RCA GLOBAL COMMUNICATIONS, INC. Application for such modification of its existing authorizations under Section 214 of the Communications Act of 1934, as amended, as may be necessary to use its previously authorized overseas communications facilities for the provision of an enhanced class of Overseas Datel Service (Datel II).	File No. I-T-C-2657

REPLY TO COMMENTS OF AMERICAN TELEPHONE AND TELEGRAPH COMPANY

RCA Global Communications, Inc. (RCA Glōbcom) hereby replies to comments submitted by American Telephone and Telegraph Company (AT&T) in connection with the above-captioned application.

At the outset, it should be noted that AT&T's pleading neither addresses the merits of RCA Glōbcom's application nor challenges the ample public interest considerations supporting Commission authorization of the limited experimental service proposed by RCA Glōbcom. Rather, AT&T appears to be using its instant filing primarily if not exclusively as a vehicle to reargue its positions in the Dataphone proceeding which have no direct bearing or relevance to the RCA Glōbcom application before the Commission. Accordingly, the AT&T submission provides no basis which would warrant delay or denial of a grant to RCA Glōbcom of the authority requested.

In view of the absence of substantive comment on RCA Glōbcom's application in the AT&T filing, each of the two "issues" which AT&T seeks to raise may be dispensed with briefly.

First, AT&T reiterates its opposition, set forth in its Dataphone application and related pleadings, to interconnection proposals with the voice/record carriers which contemplate "operational and financial parity" with AT&T. Without commenting on the lack of merit of AT&T's position, which has been demonstrated in RCA Glōbcom's filings in the Dataphone proceeding,* it is sufficient to note that no such proposal to interconnect with AT&T is contained in the subject RCA Glōbcom application to offer its experimental Datel II service for a one-year period with the Netherlands. RCA Glōbcom's application is predicated initially only on direct subscriber tieline access to the RCA Glōbcom switch.

Although RCA Glōbcom would eventually expect to expand its Datel II offering to include interconnection with domestic networks, a request to provide service on such a basis is not presently incorporated in its application. We submit, therefore, that AT&T's concern on this subject is premature. AT&T will have ample opportunity to address the interconnection question if and when RCA Glōbcom should seek such an interconnection.

---

* See, for example, RCA Glōbcom's "Petition to Dismiss or Deny" of July 23, 1976 and "Reply" of August 31, 1976 in File No. I-P-C-12.

Moreover, AT&T's position demonstrates a fundamental misunderstanding of the Datel II offering proposed by RCA Glōbcom. Datel II is a high-speed, high-quality data service which could not be suitably accommodated on the existing switched analog telephone network facilities utilized by AT&T for its domestic Dataphone offering. (This would not preclude an ultimate interconnection between Datel II and specialized digital data network facilities established by AT&T which can handle higher data rates at acceptable error levels; however, such a proposal is not now before the Commission.) RCA Glōbcom's request for competitive access to AT&T's domestic Dataphone facilities was made in connection with the more conventional Datel offering (Datel I) because of its direct similarity to Dataphone.*

Second, AT&T contends that it would be "manifestly unfair" to permit RCA Glōbcom to proceed to offer Datel II until the Commission acts on AT&T's application to provide Dataphone service to overseas points. We submit AT&T's arguments based on "equity" and "fairness" are particularly misplaced in this instance. In the first place,

---

* See ITT World Communications Inc., 2 FCC 2d 573 (1966).

Datel II is designed to implement the statements made by RCA Glōbcom in its pleadings in Docket No. 19558 with respect to enhanced data services. It is RCA Glōbcom's Datel I service which is more directly competitive with AT&T's proposed overseas Dataphone offering. In fact, Datel II is intended to serve a specialized market which the traditional Datel and Dataphone service cannot effectively accommodate. In any event, RCA Glōbcom's Datel II application proposes only an experiment of limited duration to one country. Experiments of this nature have been encouraged by the Commission to foster the development of new competitive services for the benefit of the public.

Furthermore, Datel II represents no potential threat to AT&T's vast international MTS service but the same cannot be said for the potential threat to the voice/record carriers such as RCA Glōbcom posed by AT&T's worldwide Dataphone service offering, especially if such service is allowed to go forward before full and fair interconnection between AT&T's domestic Dataphone subscribers and the overseas Datel service of the voice/record carriers is provided. Also, as the Commission is aware, the underlying decision which allowed AT&T to apply to extend Dataphone to overseas points is presently being reviewed by the U.S. Court of Appeals for the Second Circuit.* Oral argument on this appeal is expected to be heard early next year. Certainly, the issues involved in the Dataphone proceeding are far different and of considerably greater moment and complexity than are presented by the limited Datel II experiment under consideration in the instant proceeding.

---

* ITT World Communications Inc. et al v. FCC, Docket No. 76-4049.

Finally, RCA Glōbcom takes issue with the gratuitous assertion by AT&T in a footnote at the end of its pleading that RCA Glōbcom should be required to file a Section 214 application in order to adjust the rates for conventional overseas Datel service (Datel I) and indicate a change in the terms and conditions governing that service. The position advocated by AT&T is totally without support and contrary to its own practices. Certainly, AT&T has never filed a Section 214 application when it introduced rates for direct dialed calls or simple station service. Indeed, changing the rates for and/or the terms under which an existing service is offered are exactly those types of changes in a carrier's service structure universally accomplished by means of tariff revisions.

In sum, AT&T's comments provide no factual basis or legal considerations which would justify withholding prompt and favorable action on RCA Glōbcom's pending application. Accordingly, under accepted principles of Commission practice, AT&T's pleading should be dismissed and RCA Glōbcom's application granted.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.
Charles M. Lehrhaupt
s/Charles M. Lehrhaupt
Its Attorney
60 Broad Street
New York, New York 10004

December 20, 1976

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of	)	
WESTERN UNION INTERNATIONAL, INC.	)	File No. I-T-C-2658
Application for Authority, Pursuant To Section 214 of the Communications Act, to Provide "Database Service"	)	

To: The Commission

COMMENTS ON BEHALF OF GRAPHNET SYSTEMS, INC.

By Public Notice dated November 22, 1976, the Commission accepted the captioned application for filing. Graphnet Systems, Inc. (hereinafter "Graphnet"), by its attorneys, submits herewith its comments on that application.

1. In the captioned application, Western Union International, Inc. (hereinafter "WUI"), seeks authority to provide "Database Service" (hereinafter "DBS") -- a service described as providing "overseas access to and from database computers and remote computing services." (WUI App., p. 1.) WUI's efforts to implement that service have, of course, already been the subject of controversy for some three months. Initially, WUI attempted summarily to institute the service by tariff revisions filed September 24, 1976. (WUI Transmittal No. 1073.)

Petitions to reject that tariff were filed by Telenet Communications Corporation and the Computer and Business Equipment Manufacturers Association, and are currently pending.

2. Shortly after having filed the tariff revisions, WUI was advised by the Commission's Staff that it appeared Section 214 authority would be a necessary prerequisite to offering DBS.[1] By letter dated October 1, 1976, WUI requested a summary grant of "temporary authority" to institute DBS. Objections to any such peremptory grant of authority have been filed by Graphnet, Telenet, AT&T and others.

3. The captioned formal application is WUI's first recognition of the Commission's normal authorization processes. It purports to request authority to provide the services described in WUI's earlier filings, and embodied in the still-pending Transmittal No. 1073 tariff revisions. Graphnet has addressed in detail WUI's request for temporary authority in prior pleadings. In those pleadings, Graphnet has pointed out fundamental issues which the DBS proposal raises, and which must be resolved before the grant of any Commission authorization for DBS. To the extent the captioned application adds little to what WUI has already expressed in its other filings, Graphnet will not undertake to repeat its earlier contentions herein. Instead, the arguments contained in Graphnet's earlier filings with the

---

[1] That advice was confirmed by a November 12, 1976, Staff letter ruling.

Commission[2/] are incorporated herein by reference, and should be considered in the context of the captioned application as well.

4. As pointed out in Graphnet's earlier filings, the threshold problem is that the basic nature of the proposal remains sufficiently unclear that an informed public interest judgment simply cannot yet be made. In light of WUI's studied equivocation, it is uncertain with which entity, Tymshare or Tymnet, WUI will be dealing to implement DBS, and on what basis. Reversing its initial claims, WUI has more recently denied the proposal to be a carrier-to-carrier arrangement with Tymnet. Yet, as pointed out in Graphnet's earlier pleadings, the type of carrier/customer relationship between WUI and Tymshare as WUI currently claims presents serious rebate questions.

5. Moreover, the details of the understandings which underlay the proposal have yet to be clearly known. The nature of WUI's arrangements with correspondents remains a question. While WUI has generalized its willingness to entertain "similar arrangements" with "other entities," it is equally uncertain whether the type of arrangement contemplated by the captioned proposal will in fact be available to others on a non-discriminatory basis.

[2/] "Petition to Deny," filed October 15, 1976; "Reply on Behalf of Graphnet Systems, Inc.," filed November 18, 1976. Letters to the FCC from counsel for Graphnet dated October 15, November 2 and November 17, 1976.

6. These and other serious issues cannot be resolved without the type of additional information which Graphnet and others have shown to be necessary to a clear understanding of the service arrangement involved. And until such details are furnished, the Commission cannot prudently grant the authority requested. Since the time of WUI's initial tariff filing, various parties have specified the kind of information which should be furnished concerning DBS. WUI has thus far declined to provide that data. In light of WUI's approach thus far, Graphnet submits that the views of Tymnet and/or Tymshare are now a necessary prerequisite to any favorable action on the WUI proposal. As a starting point, the Staff should immediately request that those entities file their views of the contractual relationship involved, together with a detailed description of how they contemplate that the proposed arrangement with WUI will be implemented. To do less at this point would leave both the Commission and interested parties without any of the basic information necessary to fairly evaluate the application involved.

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

By Edward P. Taptich
Edward P. Taptich

McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

December 22, 1976

Its Attorneys

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
WESTERN UNION INTERNATIONAL, INC.)
)
Application for modification of)
its existing authority under)
Section 214 of the Communications) File No. I-T-C 2658
Act of 1934, as amended, to use its)
previously authorized facilities for)
the provision of Database Service.)

TO: THE COMMISSION

PETITION TO DENY UNLESS CONDITIONED

The Remote Processing Services Section (RPSS) of the Association of Data Processing Service Organizations (ADAPSO), by its attorneys, hereby petitions the Commission to deny Western Union International's (WUI) Application for Section 214 Authority to Provide Database Service (DBS, Service) to the United Kingdom, unless and until the conditions herein described are imposed. RPSS, together with other parties who have commented upon the DBS offering, is concerned that the offering be non-restrictive and non-discriminatory and that its terms and conditions be fully identified before authorization. Specifically, RPSS urges the Commission to deny the WUI Application until the following areas are clarified:

(1) the terms and conditions governing carrier and customer access to DBS;

(2) the consistency of the definition of "data processing" with that found in Section 64.702 of the Commission's Rules; and

(3) the continuing availability of private line services.

In support of its Petition, RPSS submits the following.

1. RPSS members offer to domestic and foreign customers a variety of remote data processing services whereby the customer, through the use of telephone and telegraph grade lines, communicates from his own premises with the computers of RPSS member companies. RPSS has consistently supported the development of diverse and innovative data communications services, including packet-switching services. See, e.g., Brief of Intervenor RPSS at 3, in North Carolina Utilities Commission v. F.C.C., 537 F.2d 787 (4th Cir. 1976). RPSS welcomes advancements and new services in data communications, and has no objection in principle to WUI's offering of Database Service. However, RPSS does take issue with the imprecision of the offering and of the arrangements necessary to use the Service, as described below. These infirmities make it impossible to determine in this application and record that the public convenience and necessity would be served by granting this authorization.

Background

2. On September 24, 1976, WUI filed Transmittal No. 1073, amending Tariff F.C.C. No. 11 to establish a new DBS to the United Kingdom. The Service was described as an enhanced version of Overseas Datel Service. WUI subsequently sought temporary Section 214 authority for DBS and a waiver of Sections 63.01 and 63.04 of the Commission's

Rules, pending the filing of a formal Section 214 Application. On November 12, 1976, the Chief of the Common Carrier Bureau notified WUI that the DBS "constitute[d] a new service for which additional authority would be required," and indicated that "a formal application requesting appropriate modification of...existing authority should be filed." WUI thereupon filed an application for Section 214 authority, essentially incorporating the tariff materials that had been previously filed. Comments on the Section 214 application were solicited from interested parties by December 22, 1976.

Access to Database Service

3. A service such as DBS should be available on a non-restrictive, non-discriminatory basis. Any provision or term in the WUI application hinting at exclusivity should be closely scrutinized for compliance with the "public convenience and necessity" standard of Section 214 of the Communications Act of 1934. Discrimination in any form -- on the face of an application or in the service as it operates -- is an obvious reason for denying a carrier Section 214 authority.

4. In the WUI application, the service apparently is to be offered by "prior arrangement." Tariff F.C.C. No 11, as amended, ¶2.022. In other words, some form of previous agreement or transaction is necessary before customers can gain "access to and from database computers and to and from dataprocessing computers for remote computing." Id. On the

other hand, WUI has consistently stated that the DBS is available to all interested networks and subscribers.*/

5. What is needed is a clear description of the Service's availability and general access; that is, the accompanying tariff must reflect how a carrier is to connect, how a non-carrier is to connect, what terms, costs, and equipment are involved in interconnection, etc. Further, it is important to describe the protocol and interface standards for the WUI node, that is, the point where carriers and non-carriers connect to the WUI Service. RPSS' concern in this latter regard is that even if the DBS tariff appears non-restrictive on its face, actual access to the Service and to WUI facilities should not be restrictive or exclusive. The protocol must be such as to permit other networks to connect with the WUI node in a reasonable way.

6. Accordingly, WUI must publish Service characteristics, tariff provisions, and protocol standards describing carrier and non-carrier access to the Database Service. Clarification should be a condition of the Commission's authorization under Section 214, see 49 U.S.C. §214(c), and a draft

---

*/ In materials accompanying the WUI tariff submission, it is stated: "[In addition to making the Service available through Tymnet,] WUI is also offering to interconnect DBS with the Telenet network and will offer such an arrangement to other U.S. networks and other databases and remote computing facilities." Attachment 2 to Tariff, at 1. See also id. at 5,8; Attachment 3 at 2, note (discussion of availability of DBS).

WUI has responded directly to criticism based upon potential discriminatory access to DBS: "The 'prior arrangement' requirement of WUI's Database Service is equivalent to a contract for service and merely requires that the customer presubscribe for DBS with WUI and with the host computer to which the customer wishes access. The DBS System will verify that the subscriber trying to use the DBS network is a valid user of the network." WUI Opposition to CBEMA Petition for Rejection, at 5, filed November 18, 1976. However, publication of the terms of service should be in tariffs and not contracts.

of the specific tariff provisions should be filed with an amendment to the application. *See* 47 C.F.R. §63.01(o); *cf.* 47 C.F.R. §§61.55(f)-(g) (clear and definite statement of tariff terms required). Specifically, WUI should provide answers to the following unresolved questions:

(a) What procedures must a carrier follow in order to interconnect to the WUI node? What procedures must a non-carrier customer follow in order to interconnect?

(b) What terms and conditions in the tariff or in other documents -- *e.g.*, technical references, practices, etc. -- describe interconnection by carriers and non-carriers?

(c) What costs are involved in installation -- *e.g.*, connection charges, minimum service charges, early termination penalties, etc.?

(d) Regarding physical connection to the WUI node, what equipment (*e.g.*, modems, multiplexers, minicomputers, concentrators) will be furnished by WUI? What other equipment will be necessary to effect the connection? If certain equipment will not be furnished by the carrier, what restrictions are there, if any, on the use of customer-provided elements?

(e) How will the user be billed? Will billing be by WUI or others?

(f) What compatibility standards, *e.g.*, speed of transmission or protocol, are required to interface with DBS?*/

---

*/ Concerning the protocol standards, it may be wise to waive the requirements of Section 61.74 of the Commission Rules and permit a cross reference to a technical manual.

(g) Which party — WUI or the carrier — is responsible for protocol conversion? What are the terms, conditions, and costs of protocol conversion?

(h) How will protocol conversion be accomplished? Clarification of each of these matters is required to determine whether the DBS offering is in the public interest. Likewise, such clarification is essential to afford carriers and non-carriers precise directions concerning access to and interconnection with the Database Service.

The Computer Rules

7. In addition to having numerous areas of imprecision and uncertainty, the Database Service tariff uses definitions of "data processing" which differ substantially from that contained in the Commission's Rules. Under Section 64.702(a)(1) of the Commission's Rules, data processing is defined as:

> "the use of a computer for the processing of information as distinguished from circuit or message-switching. 'Processing' involves the use of the computer for operations which include, _inter alia_, the functions of storing, retrieving, sorting, merging and calculating data, according to programmed instructions."

In contrast, WUI's definitions allegedly have been adopted from "CCITT Recommendation D.1 which is the basis for agreement in the handling of international communications."*/ WUI has indicated that these definitions will be strictly interpreted. Tariff F.C.C. No. 11, as amended, ¶2.022.

---

*/ WUI Opposition to CBEMA Petition for Rejection, at 8, filed November 18, 1976. A footnote in this WUI filing describes the source of this definition as the General Principles for the Lease of International (Continental and Intercontinental) Telecommunications Circuits for Private Service. Paragraph 7.3 thereof defines processing as "the use of the computer for a combination of operations such as calculating data, merging, sorting and so on, according to programmed instructions." _Id_.

8. Since different definitions are used, it is not clear whether or not certain data processing activities under the Commission's definitions would be excluded under the DBS and tariff definitions or whether access would be denied to customers needing these data processing services. If such exclusion exists, WUI should specify what applications or functions, if any, are excluded. Assuming that WUI has no intention of restricting use or access to DBS, RPSS suggests that the offering and the operative tariff references should be expanded to include all uses of data processing permissible under Section 64.702(a)(1). Alternatively, the phrase "data processing as defined in Section 64.702(a)(1)" could be substituted in the offering. In any event, a definition of data processing based upon an international recommendation is totally inappropriate in an application governing the relationship between WUI and various domestic carriers and customers, and when the Commission has already adopted its own definition. Since amendments to Section 64.702 are presently being considered by the Commission in Docket 20828, the Second Computer Inquiry, any changes in the definitions could be readily incorporated if the approach urged by RPSS is adopted.

Maintanance of Existing Services

9. A final matter of serious concern to RPSS regarding the WUI application is the continuing availability of basic

private line service as presently offered. There must be positive assurances that WUI in its Database Service, and other international record carriers (IRCs) in their offerings, are not attempting to curtail or supplant the use of regular private line service by data processing companies or by subscribers with data processing requirements.

10. There are significant indications that an attempt to curtail the use of regular private lines for data processing is likely. A representative of an IRC has advised an official of an RPSS member company that volume sensitive rates would be introduced, and, that this may become the only alternative for a remote access data processing company. There are further indications of such a trend described in a recent study by the Center for Communications Management, Inc. (CCMI), entitled, Telecommunications Research Report: New Trends in International Communications. The study notes the experience with the SWIFT network, which is described as a single-industry multiple-user international telecommunications network for the banking industry.[*/] The network was originally to be based on regular leased private lines. However, the Conference of European Posts and Telecommunications Administrators (CEPT) took the view that the network should

---

[*/] SWIFT is the Society for Worldwide Interbank Financial Telecommunications. It was developed in Europe in the early 1970's as a message-switching network to carry banking messages which had previously been handled either by public telegram service or public Telex services.

only be approved if a tariff therefor were based on the volume of information transmitted. The CCMI study notes in passing,

> "The interesting part here is that it is unlikely that the U.S. international record carriers will be allowed to charge the same rates. The FCC do not [sic] permit U.S. carriers to charge discriminatory tariffs as between one user and another for the same telecommunications facility. However, it might be possible for a U.S. carrier to propose a new and alternative tariff....but whether the FCC could agree to the proposal is doubtful." Telecommunications Research Report, at 40.

The study then describes how CEPT has proceeded to require volume sensitive rates and restricted the use of regular leased line rates in other similar situations.

11. The CCMI study includes a copy of a CEPT Study Group meeting held in Florence, Italy in October of 1975. At the meeting, the IRCs (including WUI) stated their disposition to agree with the principle that tariffs should be based on the volume of information transmitted. One carrier's representative is reported to have

> "...doubted whether the FCC would permit an American carrier to offer a private-use network and then to charge for the carriage of traffic according to volume. He thought that in view of the configuration of the network the FCC would not be able to offer anything other than a collection rate equal to the rental applied for Transatlantic private-use leased circuits." Id., Appendix B-7, at III.2.

Thus, there are strong indications of an effort to compel the use of volume sensitive pricing and the curtailment of regular leased circuit pricing when a data use is involved — even though the facilities are essentially the same.

12. The study goes on to note,

> "The question then arises as to whether operators of private-user networks will be forced to move on to the new network or whether they will be allowed to continue operating on their existing leased circuit networks at fixed monthly rentals. This question of freedom of choice has been expressed in a previous book:
>
> 'As long as the PTTs intend to offer digital leased circuit facilities alongside the switched digital data network there will be some break even point beyond which it will be cheaper to take a leased circuit rather than use the switched network.
>
> 'Bearing in mind the usual PTT conservatism and delay in keeping up with the state of the art in data (and other) terminal devices we can expect the present situation to continue where the informed user, using the most up to date equipment, will always be able to exploit the digital leased circuit to a much greater degree than the current PTT public switched services.' (J.G. Thompson, Digital Data Networks and the Press, International Press Telecommunications Council).
>
> "They would almost always choose to stay on private-use leased circuit networks and by applying to these their great technical skill and operating experience they would always be able to produce a more efficient and cost-effective solution than that offered by the PTTs with public data networks." Id. at 46.

Once there are available national (foreign) and international carrier operated data networks, there is no incentive to provide regular leased circuits for use for the data processing activities of remote access data processing companies or individual companies.*/ The WUI application is a step toward facilitating a curtailment of present private lines services -- unless it is appropriately conditioned.

13. The RPSS companies and other users need basic private line service in order to extend computer services to Europe and elsewhere, using a variety of innovative techniques. Neither WUI nor any other IRC has made a case for the curtailment of private line services. A basic private line provides a very efficient use of resources, being available for alternate voice/data use. In order to assure that the proposed DBS offering is not a step toward the reduction or curtailment of private line service, the Commission must condition the effectiveness of WUI's authorization upon an express commitment by WUI that it will not curtail the present use of private line service, and particularly that it will not curtail use in connection with data processing activities.**/

CONCLUSION

In conclusion, RPSS requests the Commission to deny the Section 214 application filed by WUI, unless and until certain conditions are incorporated in its Database Service offering. These conditions include: (1) clear, non-discriminatory tariff provisions stating the terms and conditions governing carrier and customer access to the Database Service; (2) utilization in the tariff of the definition of data processing contained in Section 64.702 of the Commission's Rules; and (3) assurance of the continuing availability of private line services, including the use in connection with data processing activities. Without these conditions, the Service could be offered in a restrictive, discriminatory, or exclusive manner -- all or which are inconsistent with the public convenience and necessity standard of Section 214.

---

*/ The opposition of the foreign administrations to the Commission requirement in Docket 20097 (Order FCC 76-641) that international tariffs be amended to permit resale and share use of private line service reflects a basic tendency toward limiting the use of communications facilities and services.

**/ As noted, Section 214(c) authorizes the Commission to grant Section 214 approval upon "such terms and conditions as in its judgment the public convenience and necessity may require." Under Rule 63.01(o) of the Commission's Rules, a proposed or "illustrative" tariff must accompany a Section 214 filing.

Respectfully submitted,

REMOTE PROCESSING SERVICES SECTION
OF ADAPSO

By: Herbert E. Marks

Richard P. Carr

By: Richard P. Carr

Its Attorneys

WILKINSON, CRAGUN & BARKER

1735 New York Avenue, N.W.
Washington, D.C. 20006
(202) 833-9800

Of Counsel

December 22, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of WESTERN UNION INTERNATIONAL, INC. Application for modification of its existing authorizations under Section 214 of the Communications Act of 1934, as amended, to use its previously authorized facilities for the provision of Database Service.	File No. I-T-C-2658

COMMENTS

American Telephone and Telegraph Company (AT&T) hereby submits its Comments with respect to the Application of Western Union International, Inc. (WUI) for authorization to use its facilities for the provision of an enhanced class of overseas Datel Service called Database Service (DBS). In support of its Comments, AT&T respectfully shows:

1. WUI requests the Commission to authorize the provision of an enhanced overseas Datel Service (DBS) between the United States and the United Kingdom on an experimental basis for a period of one year. DBS will provide access for communications "to and from database computers and remote computing systems"* and will

---

* WUI Application, p. 2.

increase the operating speeds of its present Datel Service offering to 2400 bits per second "to meet recent competitive filings".[#] Access to DBS will be provided by both dedicated facilities and "over the public switched network".[##] Moreover, and as stated in the Application:

> ...WUI is ready, willing and able, and has already publicly offered to interconnect with other U.S. entities on a non-discriminatory basis.[###]

AT&T Opposes Any Interconnection Requirements Which Seek "Operational And Financial Parity".

2. WUI's Application states that customers of WUI will be able to access DBS by dedicated lines and by interconnection with the public switched network. WUI does not describe the nature of this access except to state that it is "ready, willing and able" to interconnect with the domestic public switched network on a "non-discriminatory" basis.

3. The Commission's Order in Docket No. 19558[####]

[#] WUI Transmittal No. 1073, dated September 24, 1976, p. 2 which is incorporated by reference in WUI's Application.

[##] Id.

[###] Id.

[####] 57 F.C.C. 2d 705 (1976).

instructed the international record carriers (IRCs) to file pleadings "regarding what facilities and interconnections, not presently provided, are necessary for their proposed [enhanced Datel] services".* The Commission also stated that interconnection should be "pursuant to [the Commission's] policies established for domestic common carriers".**

4. In response to this directive, WUI, in addition to the other IRCs, filed Comments which advanced demands not merely for interconnection, but for total integration of their facilities into the overseas MTS network.*** AT&T's Reply and informal discussions with the IRCs demonstrated the complete infeasibility of WUI's "parity" approach, its harmful impact on service and the total absence of any support for these demands in the Commission's Order.

5. AT&T stands ready to afford WUI and the other IRCs interconnection pursuant to the Commission's policies established for domestic common carriers and is prepared to enter into meaningful discussions toward this end. However, AT&T is opposed to any proposal which looks toward the integration of WUI's facilities into the over-

---

* Id. at 711.

** Id.

*** See Comments of WUI dated April 9, 1976.

seas MTS network as previously demanded by WUI and the other IRCs.

It Would Be Manifestly Unfair For The Commission To Permit WUI To Offer DBS Until It Acts Upon AT&T's Application For DATAPHONE* Transmission To Overseas Points.

6. On April 9, 1976, AT&T filed its Section 214 Application for appropriate modification of existing authorizations to permit the use of the MTS network for DATAPHONE transmission to overseas points. WUI requested the Commission to neither consider nor process the Application until AT&T had met WUI's interconnection demands.**

7. Despite WUI's late request, the Commission accepted AT&T's Application for filing on June 14, 1976. WUI opposed AT&T's Application again arguing that the Application should be denied or deferred "until the successful completion of interconnection and access arrangements".***

8. In AT&T's view, it would be unfair to grant WUI's instant Application while at the same time deferring action on AT&T's Application which has been on file with the Commission for a period of over six months. In view of WUI's consistent requests to the Commission to withhold action on AT&T's Application until the Commission has ruled

---

* DATAPHONE is a registered trademark of the AT&T Co.

** WUI letter to Walter R. Hinchman dated June 15, 1976.

*** WUI Petition to Defer or Deny, File No. I-P-C-12, dated July 23, 1976.

on WUI's demands, basic fairness would require similar treatment regarding WUI's Application.*

9. Accordingly, the Commission should evaluate WUI's Application in light of its unspecified interconnection requirements and its request that the Commission take action on its Application for enhanced Datel service while at the same time requesting the Commission to defer action on AT&T's DATAPHONE Application.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By______________________________
Edgar Mayfield

By______________________________
Alfred G. Walton

By______________________________
Randall B. Lowe

Its Attorneys
32 Avenue of the Americas
New York, New York 10013

DATED: December 22, 1976

---

* Moreover, AT&T continues to question the appropriateness of WUI's request for temporary authority for the provision of DBS in light of the Commission's Order in Docket No. 19558 and AT&T's pending Application. See AT&T's Petition to Deny dated December 10, 1976.

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of)
)
Western Union International) File No. I-T-C-2658
Section 214 Application for)
Database Service)

To: The Commission

RESPONSE OF COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION (CBEMA)

The Computer and Business Equipment Manufacturers Association (CBEMA), by its attorneys, submits the following response to the application of Western Union International (WUI) for authority to offer Database Service under the carrier's Datel tariff.[1]

The Proposed Database Service (DBS) Offering

Database Service (DBS) is proposed in Transmittal No. 1073 and the Section 214 application[2] as a new class of

---

[1] The WUI application appeared on public notice November 22, 1976, File No. I-T-C-2658.

[2] This description of DBS is drawn primarily from the tariff and materials filed September 24, 1976, under Transmittal No. 1073. The Section 214 application was filed November 9, 1976, in response to a Staff determination that additional authority was needed, but the formal application added little detail to the material filed with the tariff.

Overseas Datel Service, heretofore a data station-to-data station switched service. The DBS class does not provide connections between data stations, however. Its offering, "by prior arrangement," is service

> (a) between data stations on the one hand and database computers or dataprocessing computers on the other hand, or
>
> (b) between and among database computers and dataprocessing computers. 1/
>
> Tariff, Section 2.022.

In the case of data stations, access to the WUI node and United Kingdom Post Office node can be made by the public switched network or dedicated facilities; host computers are connected

---

1/ These two classes of host computers are defined as follows:

> Database Computer - A computer operated by a service organization offering subscribers proprietary information retrieval or access to information stored in the computer by the service organization, when the subscriber is a customer of the Company. The subscriber and the service organization may be part of the same entity. The transmission of messages is not a database service as contemplated by this definition.
>
> Dataprocessing Computer - A computer used for a combination of operations such as calculating data, merging, sorting, and so on, in accordance with programmed instructions as distinguished from circuit or message switching. The transmission of messages through the computer without change in content or meaning is not processing.
> [Tariff, Section 3.01.]

CBEMA regards these two definitions as confusing and presently in conflict with Section 64.702 of the Commission's Rules and the Computer Inquiry, 28 F.C.C.2d 267 (1971). See Petition for Rejection, pp. 15-18, and Reply pp. 14-18.

to the nodes only by dedicated facilities.[1]

DBS is proposed as a joint offering by WUI and the United Kingdom Post Office, with the further participation on the U.S. end by Tymshare or Tymnet, Inc.[2] The rates for DBS include a monthly charge ($50 after the first month), an hourly charge for use of the network ($10 per hour) and a charge per kilocharacter transmitted ($.50). (Tariff, Section 5.021.) The revenues recovered are to be split between WUI and the U.K.P.O. at the rate of $4.00 each an hour and $.20 per kilocharacter, with Tymshare receiving $1.00 per hour and $.10 per kilocharacter.[3] No further details regarding the operation of DBS in the U.K. have been disclosed, and inquiries to the U.K.P.O. elicited no useful information.

The supporting material discloses that Tymnet will connect to DBS at a WUI node in New York City, and the operational chart of DBS shows the component Network Supervisor, which will perform verification of subscriber access and the link to the host computer, as located within the Tymnet network and apart from the WUI components. (Attachment 2, Figure 1, p. 5.)

---

[1] Transmittal No. 1073, Attachment 2, pp. 6-8, Figure 1.

[2] The first WUI documents describing Database Service spoke of an agreement with Tymnet as a (potential) U.S. carrier. When the WUI contract with Tymnet was released, however, it turned out to be a carrier-customer agreement with Tymshare. Taken at face value, the carrier-customer agreement is an extraordinary document pledging "payouts" or rebates to one customer of a service ostensibly open to the public. See Reply, pp. 8-13.

[3] Tymnet or Tymshare appears to be receiving its payout from two schedules, one for Tymnet-originated hours ($1.00/h + $.10 per kilocharacter) and another for WUI-originated hours. (Att. III, P. 7.)

However, the tariff itself describes only rates for service from New York or Washington and the offering of the service "by prior arrangement." (Tariff, Sections 5.021 and 2.022.) This silence of the tariff and its supporting material regarding the terms of connections to the service was not relieved by any further information in the WUI Opposition or the Section 214 application.

CBEMA's Interest in Database Service

CBEMA is a trade association representing computer and business equipment manufacturers and vendors of data processing services.[1/] CBEMA members and their customers make extensive use of overseas switched communications services and private line services in accomplishing their data processing services. Although enhanced, data-oriented services, such as DBS,[2/] may offer the prospect of efficient and reliable connections for computers and data stations in certain circumstances, the offering of enhanced services or services with volume-based rates raises major international policy questions which must be addressed.

1/ CBEMA is participating in this proceeding through its Telecommunications Committee. The positions taken by CBEMA through its committee structure represent a concensus of the membership. Members of CBEMA are at all times free to present individual or varying views depending upon their particular product lines or marketing philosophy.

2/ The term "enhanced" service is used by WUI and other parties in describing DBS. Ostensibly the "enhancements" refer to features of the service such as subscriber verification which are not presently offered in the Datel or private line tariffs.

Because of the possible utility of DBS for data processing users, for example, it is essential that non-discriminatory access to the service be assured without regard to the particular domestic carrier or entity through which the ultimate user connects to DBS. It is also important that, in devoting its resources to DBS, WUI and its partners continue to offer basic, transparent private line facilities on equally favorable and non-discriminatory terms with enhanced services. Transparent private line circuits[1] are necessary so that those entities offering data processing services can design and offer complete services on a competitive basis even though they do not utilize DBS.[2] CBEMA members are thus vitally concerned over the terms and conditions under which basic and enhanced overseas communications services will be provided, and this concern has led to our efforts in seeking to assure that any certificate and tariff offering Database Service be clear and explicit in the various vital areas discussed below.

---

[1] A transparent circuit is one in which the carrier imposes no operational requirements other than the electrical characteristics of the transmission medium. For example, AT&T's Type 3002 private line channels impose no speed of transmission, length of message or other constraints on users apart from the inherent electrical characteristics of the channel. Users can then set up a customized network by adapting the basic facility to their particular needs.

[2] That is, a large number of data processing services are tailored to the needs of individual subscribers. To offer tailored services most efficiently, transparent private line facilities are often a critical component. If basic services are neglected or disadvantaged by the carriers in favor of enhanced services with limiting operational characteristics (*i.e.*, speed of transmission; specific protocols) then the ability of CBEMA members to serve their customers' data processing needs most efficiently will be hindered.

Summary of Position

In its Petition for Rejection of Transmittal No. 1073, CBEMA raised five issues which are appropriate for consideration in a decision on the Section 214 application filed by WUI.[1/] Each of these issues addresses fundamental aspects of the proposed Database Service, and each illustrates the absence in the present record of the full and complete information required for the statutory finding that a grant of the application will be in the public interest.[2/] In response to the points made below, we urge the Commission to ascertain the full information from WUI or other participating entities and to withhold any grant of the WUI application until the necessary information is received and analyzed by the Staff and interested parties.

First, CBEMA has argued at length that important terms and conditions of service under the DBS tariff are unexplained. The means of connection is unclear, as is the equipment required to interconnect, the user choices available and

---

[1/] The CBEMA Petition for Rejection of Tariff and its Reply to Opposition are incorporated herein. Copies are attached for convenience.

[2/] In order to "undertake the construction of a new line" or initiate a new service, a carrier must obtain from the Commission an affirmative finding and a certificate "that the present or future public convenience and necessity require or will require the construction." 47 U.S.C. §214. It is CBEMA's position that the required affirmative finding cannot be made without the submission and analysis of the information called for herein.

the domestic entities which can supply the requisite connection or equipment. Certain key operational factors are also unknown, such as interaction of the DBS interface unit and node with the customer's data processing system, and the protocols to be used by DBS. As shown in the referenced and attached pleadings, CBEMA has called for the necessary information, but no satisfactory explanations have been provided.

Second, CBEMA has raised the issue of the policy of WUI toward message-switching and other activities performed by data processing service vendors in full compliance with Section 64.702 of the Commission's Rules. The WUI tariff prohibiting "transmission of messages" by host computers and the WUI Opposition interpreting this phrase to bar the "use of DBS for message-switching" have prompted CBEMA's concern. CBEMA has asked whether WUI purports to deny service to hybrid data processing service vendors who offer a lawful message-switching element in their data processing services on the basis of the DBS tariff prohibition of message-switching. If this policy is intended, how is WUI to police such user activities and how can denials of service be reconciled with a carrier's statutory responsibility to serve all customers without discrimination? WUI has provided no satisfactory answers.

Third, the agreement between WUI and Tymshare, the first customer for DBS, is fraught with serious questions of rebates and discrimination. WUI has agreed to pay its customer or return a portion of tariff revenues to it on the basis of the volume of traffic transmitted by WUI, as well as to purchase a piece of equipment to be used in rendering service. This carrier-customer payout agreement is unprecedented to CBEMA's knowledge, and on its face it raises a compelling need for further explanation and information regarding its compliance with the Communications Act and the fundamental public interest.

Fourth, CBEMA has raised the question whether the arrangements made by WUI for privacy and security of subscriber lists for DBS customers are adequate for customer needs.[1/] The tariff material explains that the WUI node in the U.S. will be performing subscriber identification and verification functions which will necessitate the use in some fashion of subscriber lists or codes. With the uncertainties surrounding the rule of Tymshare/Tymnet in DBS, further elaboration is required concerning how much customer detail will be needed by the WUI node and how that information will be kept confidential. Similar questions arise regarding the overseas portion of DBS.[2/] Looking at

---

[1/] These four issues have been discussed extensively in the CBEMA Petition for Rejection of Tariff and the Reply to Opposition, and the discussions will not be repeated here.

[2/] The CCITT Recommendation D.1 referenced by WUI in discussing DBS requires carriers to release names and locations of customers and authorized users to a requesting government consistent with national laws regarding privacy and security. Some of the European governments, notably the United Kingdom Post Office, operate data processing services that may be competitive with the services to DBS customers. The conflicts posed by this situation are obvious.

the service as a whole, moreover, the question arises whether DBS subscribers will have to obtain a license for computer operations from the U.K.P.O. which under recent regulations entitles the U.K.P.O. to monitor any and all computer messages.[1]

Finally, the question has been raised whether DBS is part of a plan by the IRC's and their international partners to revise the provision of overseas private line service in favor of these switched or shared services with usage or volume-sensitive rates. As CBEMA will show below, many data processing service vendors and their customers have built their substantial business operations around the availability of dedicated private line services used in data processing services. The minutes of a CEPT meeting with the IRC's, attached to this Response, indicate that the European Administrations and the IRC's favor the introduction of enhanced, usage- or volume-sensitive services with rates much higher than present private line circuits whenever the volume-sensitive services can be introduced.[2] Because the continued availability of dedicated services is vital to

---

[1] The license required for a "computer and ancillary equipment" is described in Attachment B, hereto. If this license is to be required of customers with terminals or computers in the U.K, users should be advised of this fact before service is ordered.

[2] Attachment C contains the minutes of a meeting by the Conference of European Postal and Telecommunications Administrations (C.E.P.T.), Study Group "General Principles and Tariffs," Florence, Oct. 2-8, 1975. The minutes are attached to a report compiled by the Center for Communications Management, Inc. which is reprinted with permission of the authors.

U.S. data processing service vendors and their customers, including CBEMA members, we urge the Commission to conduct a full investigation of this matter and the role of DBS in it, before DBS becomes a first step in a process of converting private line service to shared-use or volume-sensitive service.

Transparent International Private Line Service Is Vital To The Data Processing Industry

Since the beginning of commercial data processing services in the mid 1950's and 1960's, a great proportion of services have been designed and engineered for a particular customer or use. With the growth of more sophisticated data processing networks, terminal equipment, mini computers and the like in the past decade, the range of customer choices to meet customer requirements has increased for both time-sharing services, in-house systems, and other data processing services. A key ingredient in this growth has been the availability of transparent private line circuits which can then be customized by the user by channel subsdivision, high-speed transmission, a variety of protocols and terminal equipment, and other techniques to allow the user to obtain maximum efficiency of his total, communications-dependent data processing system. Relying on the availability of transparent private line services, immense business investments have been made for both domestic and international data processing systems, and the importance of continued transparent private line service cannot be overestimated.[1]

The DBS tariff presents an illustration of the problems that will be faced by data processing services if they are required to use so-called "enhanced" shared services or volume- or usage-sensitive tariff structures. "Enhanced" services commonly contain specific operating parameters such as packet-switching technology which determines the number of bits in a unit of transmission, the speed of transmission, or protocols which determine the timing of information sent to the computer. Any one of these or other operational factors could completely disrupt a data processing service and require extensive modification of an exorbitant cost. In extreme cases, an entire U.S. and overseas in-house data processing system may have to be altered to become compatible with one overseas "enhanced" service, at an enormous cost. For this reason, CBEMA has argued at length for disclosure of the key operating details of DBS - protocols, codes, speeds of transmission at every link, and other items - so that users could evaluate the true utility of the service for their data processing systems. In addition, we have asked for a statement from WUI that private line service will continue to be available as an alternative to DBS.

---

[1] In this regard, it is our position that any move on the part of the IRC's to cut back private line service or convert it to a usage-sensitive or volume-sensitive or shared or switched service should be considered a partial discontinuance of service requiring a Section 214 proceeding.

Aside from operational factors that may restrict or disrupt data processing services, DBS as an enhanced service has proposed a rate structure based on time and volume of transmissions. By the use of sophisticated equipment with private line circuits, data processing service vendors and equipment companies have increased the efficiency of these circuits such that large volumes of data can be transmitted over the bandwidth available. A rate structure that charges by time and volume of data transmitted nullifies the previous efforts of users toward cost efficiency and could raise the cost of service enormously.[1] In cases where no significant enhancement of private line service is added by the introduction of DBS or like services, the result of volume-based rates could be a huge increase in rates for exactly the same service with the cost to carriers being exactly the same. Such a price rise would be unconscionable under FCC ratemaking policies.[2] To the extent that the DBS proposal represents a beginning step in any move to introduce volume-based rates on international private line service or to curtail private line service in favor of services with volume-based rates, this attempt should be clearly rebuffed. DBS should only be granted a certificate of public interest and necessity as an alternative to presently offered international private line circuits.

---

[1] Consider, for example, the cost to a user at $50/hour and 50¢ a kilocharacter when the user transmits data for any length of time at 4800 or 9600 bits per second (600 or 1200 characters per second).

[2] The decision in Docket No. 18128 states clearly that cost of facilities is to be the predominant factor in setting rates for common carrier services. FCC 76-886, October 1, 1976.

Conclusion

Again CBEMA urges the Commission to ascertain the full facts regarding DBS before the service is initiated. At this point users are wholly unclear as to what enhancements are offered, what operating parameters are involved, what user choices are open and what part DBS will play in future overseas services. All of these questions are integral to an investigation of DBS in its whole context and a judgment whether participation in such a service by a U.S. carrier is in the public interest. In view of the fact that DBS and like services may be harbingers of future international services, no judgment on DBS should be made until all the necessary information is obtained and the policy implications have been reviewed by the Staff and interested parties.

Respectfully submitted,

COMPUTER BUSINESS EQUIPMENT
MANUFACTURERS ASSOCIATION

By____________________________
Joseph M. Kittner

____
Peter M. Andersen

____
Virginia S. Carson

McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

____
John S. Voorhees
Howrey & Simon
1730 Pennsylvania Avenue, N.W.
Washington, D. C. 20006

December 22, 1976

Its Attorneys

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

December 23, 1976

IN REPLY REFER TO:
9420

Philip M. Walker, Esq.
Vice President & General Counsel
Telenet Communications Corporation
1050 17th Street, N.W.
Washington, D. C. 20036

Donald E. Ward, Esq.
Law Offices of Donald E. Ward
1050 17th Street, N.W. - Suite 850
Washington, D. C. 20036

In Re: File No. I-T-C-2658

Gentlemen:

This is in response to your December 22, 1976 request for extension of time to file a petition to deny or comments regarding the above-referenced application. You state that you have learned informally that the application of Tymnet, Inc. {W-P-C-927} for Section 214 authority to offer a domestic communications common carrier service has been granted and that because the grant of that application may have an impact upon the above-referenced application an extension of time is warranted until five working days after the release of the order disposing of the Tymnet application.

Your submission of pleadings with respect to the Tymnet application reflects your awareness of the pleading cycle regarding that application and the fact that a final determination concerning the application could be issued at any time. However, your request for extension of time was filed on December 22, the very last day that petitions to deny could be filed concerning the WUI application. Your awareness of these factors and of the substance of the Tymnet application should have provided you with ample opportunity to address the potential effect of a grant of the Tymnet application on the WUI application or, at minimum, to have filed an earlier request for extension of time consistent with the intent of Section 1.47{c} of the Commission's Rules.

We shall therefore deny the extension requested. However, in view of the uncertainty of Commission action on your late-filed request, we will extend the time until December 27, 1976 to allow you to make a timely filing.

Accordingly, your request for extension of time as detailed in your December 22 letter is denied to the extent indicated herein.

Sincerely yours,

Charles R. Cowan By R.E.J.

Charles R. Cowan
Chief, Facilities and Services Division
For: Chief, Common Carrier Bureau

cc: Kathryn E. McDonnell, Esq.
Edward P. Taptich, Esq.

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of WESTERN UNION INTERNATIONAL, INC. Application for modification of its existing authority under Section 214 of the Communications Act of 1934, as amended, to use its previously authorized facilities for the provision of Database Service.	)	File No. I-T-C 2658

TO: THE COMMISSION

PETITION TO DENY UNLESS CONDITIONED

The Remote Processing Services Section (RPSS) of the Association of Data Processing Service Organizations (ADAPSO), by its attorneys, hereby petitions the Commission to deny Western Union International's (WUI) Application for Section 214 Authority to Provide Database Service (DBS, Service) to the United Kingdom, unless and until the conditions herein described are imposed. RPSS, together with other parties who have commented upon the DBS offering, is concerned that the offering be non-restrictive and non-discriminatory and that its terms and conditions be fully identified before authorization. Specifically, RPSS urges the Commission to deny the WUI Application until the following areas are clarified:

(1) the terms and conditions governing carrier and customer access to DBS;

(2) the consistency of the definition of "data processing" with that found in Section 64.702 of the Commission's Rules; and

(3) the continuing availability of private line services.

In support of its Petition, RPSS submits the following.

1. RPSS members offer to domestic and foreign customers a variety of remote data processing services whereby the customer, through the use of telephone and telegraph grade lines, communicates from his own premises with the computers of RPSS member companies. RPSS has consistently supported the development of diverse and innovative data communications services, including packet-switching services. See, e.g., Brief of Intervenor RPSS at 3, in North Carolina Utilities Commission v. F.C.C., 537 F.2d 787 (4th Cir. 1976). RPSS welcomes advancements and new services in data communications, and has no objection in principle to WUI's offering of Database Service. However, RPSS does take issue with the imprecision of the offering and of the arrangements necessary to use the Service, as described below. These infirmities make it impossible to determine in this application and record that the public convenience and necessity would be served by granting this authorization.

Background

2. On September 24, 1976, WUI filed Transmittal No. 1073, amending Tariff F.C.C. No. 11 to establish a new DBS to the United Kingdom. The Service was described as an enhanced version of Overseas Datel Service. WUI subsequently sought temporary Section 214 authority for DBS and a waiver of Sections 63.01 and 63.04 of the Commission's

Rules, pending the filing of a formal Section 214 Application. On November 12, 1976, the Chief of the Common Carrier Bureau notified WUI that the DBS "constitute[d] a new service for which additional authority would be required," and indicated that "a formal application requesting appropriate modification of...existing authority should be filed." WUI thereupon filed an application for Section 214 authority, essentially incorporating the tariff materials that had been previously filed. Comments on the Section 214 application were solicited from interested parties by December 22, 1976.

Access to Database Service

3. A service such as DBS should be available on a non-restrictive, non-discriminatory basis. Any provision or term in the WUI application hinting at exclusivity should be closely scrutinized for compliance with the "public convenience and necessity" standard of Section 214 of the Communications Act of 1934. Discrimination in any form -- on the face of an application or in the service as it operates -- is an obvious reason for denying a carrier Section 214 authority.

4. In the WUI application, the service apparently is to be offered by "prior arrangement." Tariff F.C.C. No 11, as amended, ¶2.022. In other words, some form of previous agreement or transaction is necessary before customers can gain "access to and from database computers and to and from dataprocessing computers for remote computing." *Id*. On the

other hand, WUI has consistently stated that the DBS is available to all interested networks and subscribers.*/

5. What is needed is a clear description of the Service's availability and general access; that is, the accompanying tariff must reflect how a carrier is to connect, how a non-carrier is to connect, what terms, costs, and equipment are involve[illegible]terconnection, etc. Further, it is important to describe [illegible] protocol and interface standards for the WUI node, that is, the point where carriers and non-carriers connect to the WUI Service. RPSS' concern in this latter regard is that even if the DBS tariff appears non-restrictive on its face, actual access to the Service and to WUI facilities should not be restrictive or exclusive. The protocol must be such as to permit other networks to connect with the WUI node in a reasonable way.

6. Accordingly, WUI must publish Service characteristics, tariff provisions, and protocol standards describing carrier and non-carrier access to the Database Service. Clarification should be a condition of the Commission's authorization under Section 214, see 49 U.S.C. §214(c), and a draft

---

*/ In materials accompanying the WUI tariff submission, it is stated: "[In addition to making the Service available through Tymnet,] WUI is also offering to interconnect DBS with the Telenet network and will offer such an arrangement to other U.S. networks and other databases and remote computing facilities." Attachment 2 to Tariff, at 1. See also id. at 5,8; Attachment 3 at 2, note (discussion of availability of DBS).

WUI has responded directly to criticism based upon potential discriminatory access to DBS: "The 'prior arrangement' requirement of WUI's Database Service is equivalent to a contract for service and merely requires that the customer presubscribe for DBS with WUI and with the host computer to which the customer wishes access. The DBS System will verify that the subscriber trying to use the DBS network is a valid user of the network." WUI Opposition to CBEMA Petition for Rejection, at 5, filed November 18, 1976. However, publication of the terms of service should be in tariffs and not contracts.

of the specific tariff provisions should be filed with an amendment to the application. See 47 C.F.R. §63.01(o); cf. 47 C.F.R. §§61.55(f)-(g) (clear and definite statement of tariff terms required). Specifically, WUI should provide answers to the following unresolved questions:

(a) What procedures must a carrier follow in order to interconnect to the WUI node? What procedures must a non-carrier customer follow in order to interconnect?

(b) What terms and conditions in the tariff or in other documents -- e.g., technical references, practices, etc. -- describe interconnection by carriers and non-carriers?

(c) What costs are involved in installation -- e.g., connection charges, minimum service charges, early termination penalties, etc.?

(d) Regarding physical connection to the WUI node, what equipment (e.g., modems, multiplexers, minicomputers, concentrators) will be furnished by WUI? What other equipment will be necessary to effect the connection? If certain equipment will not be furnished by the carrier, what restrictions are there, if any, on the use of customer-provided elements?

(e) How will the user be billed? Will billing be by WUI or others?

(f) What compatibility standards, e.g., speed of transmission or protocol, are required to interface with DBS?[*]

---

[*] Concerning the protocol standards, it may be wise to waive the requirements of Section 61.74 of the Commission Rules and permit a cross reference to a technical manual.

(g) Which party — WUI or the carrier — is responsible for protocol conversion? What are the terms, conditions, and costs of protocol conversion?

(h) How will protocol conversion be accomplished? Clarification of each of these matters is required to determine whether the DBS offering is in the public interest. Likewise, such clarification is essential to afford carriers and non-carriers precise directions concerning access to and interconnection with the Database Service.

The Computer Rules

7. In addition to having numerous areas of imprecision and uncertainty, the Database Service tariff uses definitions of "data processing" which differ substantially from that contained in the Commission's Rules. Under Section 64.702(a)(1) of the Commission's Rules, data processing is defined as:

> "the use of a computer for the processing of information as distinguished from circuit or message-switching. 'Processing' involves the use of the computer for operations which include, *inter alia*, the functions of storing, retrieving, sorting, merging and calculating data, according to programmed instructions."

In contrast, WUI's definitions allegedly have been adopted from "CCITT Recommendation D.1 which is the basis for agreement in the handling of international communications."*/ WUI has

---

*/ WUI Opposition to CBEMA Petition for Rejection, at 8, filed November 18, 1976. A footnote in this WUI filing describes the source of this definition as the General Principles for the Lease of International (Continental and Intercontinental) Telecommunications Circuits for Private Service. Paragraph 7.3 thereof defines processing as "the use of the computer for a combination of operations such as calculating data, merging, sorting and so on, according to programmed instructions." *Id*.

indicated that these definitions will be strictly interpreted. Tariff F.C.C. No. 11, as amended, ¶2.022.

8. Since different definitions are used, it is not clear whether or not certain data processing activities under the Commission's definitions would be excluded under the DBS and tariff definitions or whether access would be denied to customers needing these data processing services. If such exclusion exists, WUI should specify what applications or functions, if any, are excluded. Assuming that WUI has no intention of restricting use or access to DBS, RPSS suggests that the offering and the operative tariff references should be expanded to include all uses of data processing permissible under Section 64.702(a)(1). Alternatively, the phrase "data processing as defined in Section 64.702(a)(1)" could be substituted in the offering. In any event, a definition of data processing based upon an international recommendation is totally inappropriate in an application governing the relationship between WUI and various domestic carriers and customers, and when the Commission has already adopted its own definition. Since amendments to Section 64.702 are presently being considered by the Commission in Docket 20828, the Second Computer Inquiry, any changes in the definitions could be readily incorporated if the approach urged by RPSS is adopted.

Maintanance of Existing Services

9. A final matter of serious concern to RPSS regarding the WUI application is the continuing availability of basic

private line service as presently offered. There must be positive assurances that WUI in its Database Service, and other international record carriers (IRCs) in their offerings, are not attempting to curtail or supplant the use of regular private line service by data processing companies or by subscribers with data processing requirements.

10. There are significant indications that an attempt to curtail the use of regular private lines for data processing is likely. A representative of an IRC has advised an official of an RPSS member company that volume sensitive rates would be introduced, and, that this may become the only alternative for a remote access data processing company. There are further indications of such a trend described in a recent study by the Center for Communications Management, Inc. (CCMI), entitled, Telecommunications Research Report: New Trends in International Communications. The study notes the experience with the SWIFT network, which is described as a single-industry multiple-user international telecommunications network for the banking industry.[*/] The network was originally to be based on regular leased private lines. However, the Conference of European Posts and Telecommunications Administrators (CEPT) took the view that the network should

---

[*/] SWIFT is the Society for Worldwide Interbank Financial Telecommunications. It was developed in Europe in the early 1970's as a message-switching network to carry banking messages which had previously been handled either by public telegram service or public Telex services.

only be approved if a tariff therefor were based on the volume of information transmitted. The CCMI study notes in passing,

> "The interesting part here is that it is unlikely that the U.S. international record carriers will be allowed to charge the same rates. The FCC do not [sic] permit U.S. carriers to charge discriminatory tariffs as between one user and another for the same telecommunications facility. However, it might be possible for a U.S. carrier to propose a new and alternative tariff....but whether the FCC could agree to the proposal is doubtful." Telecommunications Research Report, at 40.

The study then describes how CEPT has proceeded to require volume sensitive rates and restricted the use of regular leased line rates in other similar situations.

11. The CCMI study includes a copy of a CEPT Study Group meeting held in Florence, Italy in October of 1975. At the meeting, the IRCs (including WUI) stated their disposition to agree with the principle that tariffs should be based on the volume of information transmitted. One carrier's representative is reported to have

> "...doubted whether the FCC would permit an American carrier to offer a private-use network and then to charge for the carriage of traffic according to volume. He thought that in view of the configuration of the network the FCC would not be able to offer anything other than a collection rate equal to the rental applied for Transatlantic private-use leased circuits." Id., Appendix B-7, at III.2.

Thus, there are strong indications of an effort to compel the use of volume sensitive pricing and the curtailment of regular leased circuit pricing when a data use is involved -- even though the facilities are essentially the same.

12. The study goes on to note,

> "The question then arises as to whether operators of private-user networks will be forced to move on to the new network or whether they will be allowed to continue operating on their existing leased circuit networks at fixed monthly rentals. This question of freedom of choice has been expressed in a previous book:
>
> 'As long as the PTTs intend to offer digital leased circuit facilities alongside the switched digital data network there will be some break even point beyond which it will be cheaper to take a leased circuit rather than use the switched network.
>
> 'Bearing in mind the usual PTT conservatism and delay in keeping up with the state of the art in data (and other) terminal devices we can expect the present situation to continue where the informed user, using the most up to date equipment, will always be able to exploit the digital leased circuit to a much greater degree than the current PTT public switched services.' (J.G. Thompson, Digital Data Networks and the Press, International Press Telecommunications Council).
>
> "They would almost always choose to stay on private-use leased circuit networks and by applying to these their great technical skill and operating experience they would always be able to produce a more efficient and cost-effective solution than that offered by the PTTs with public data networks."
> *Id.* at 46.

Once there are available national (foreign) and international carrier operated data networks, there is no incentive to provide regular leased circuits for use for the data processing activities of remote access data processing companies or individual companies.[*/] The WUI application is a step toward facilitating a curtailment of present private lines services -- unless it is appropriately conditioned.

13. The RPSS companies and other users need basic private line service in order to extend computer services to Europe and elsewhere, using a variety of innovative techniques. Neither WUI nor any other IRC has made a case for the curtailment of private line services. A basic private line provides a very efficient use of resources, being available for alternate voice/data use. In order to assure that the proposed DBS offering is not a step toward the reduction or curtailment of private line service, the Commission must condition the effectiveness of WUI's authorization upon an express commitment by WUI that it will not curtail the present use of private line service, and particularly that it will not curtail use in connection with data processing activities.[**/]

CONCLUSION

In conclusion, RPSS requests the Commission to deny the Section 214 application filed by WUI, unless and until

---

[*/] The opposition of the foreign administrations to the Commission requirement in Docket 20097 (Order FCC 76-641) that international tariffs be amended to permit resale and share use of private line service reflects a basic tendency toward limiting the use of communications facilities and services.

[**/] As noted, Section 214(c) authorizes the Commission to grant Section 214 approval upon "such terms and conditions as in its judgment the public convenience and necessity may require." Under Rule 63.01(o) of the Commission's Rules, a proposed or "illustrative" tariff must accompany a Section 214 filing.

certain conditions are incorporated in its Database Service offering. These conditions include: (1) clear, non-discriminatory tariff provisions stating the terms and conditions governing carrier and customer access to the Database Service; (2) utilization in the tariff of the definition of data processing contained in Section 64.702 of the Commission's Rules; and (3) assurance of the continuing availability of private line services, including the use in connection with data processing activities. Without these conditions, the Service could be offered in a restrictive, discriminatory, or exclusive manner -- all or which are inconsistent with the public convenience and necessity standard of Section 214.

Respectfully submitted,

REMOTE PROCESSING SERVICES SECTION
OF ADAPSO

By: Herbert E. Marks

Richard P. Carr

By: Richard P. Carr

Its Attorneys

WILKINSON, CRAGUN & BARKER

1735 New York Avenue, N.W.
Washington, D.C. 20006
(202) 833-9800

Of Counsel

December 22, 1976

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of)
)
WESTERN UNION INTERNATIONAL, INC.)
) File No. I-T-C-2658
Application for Authority, Pursuant)
To Section 214 of the Communications)
Act, to Provide "Database Service")

To: The Commission

COMMENTS ON BEHALF OF GRAPHNET SYSTEMS, INC.

By Public Notice dated November 22, 1976, the Commission accepted the captioned application for filing. Graphnet Systems, Inc. (hereinafter "Graphnet"), by its attorneys, submits herewith its comments on that application.

1. In the captioned application, Western Union International, Inc. (hereinafter "WUI"), seeks authority to provide "Database Service" (hereinafter "DBS") -- a service described as providing "overseas access to and from database computers and remote computing services." (WUI App., p. 1.) WUI's efforts to implement that service have, of course, already been the subject of controversy for some three months. Initially, WUI attempted summarily to institute the service by tariff revisions filed September 24, 1976. (WUI Transmittal No. 1073.)

Petitions to reject that tariff were filed by Telenet Communications Corporation and the Computer and Business Equipment Manufacturers Association, and are currently pending.

2. Shortly after having filed the tariff revisions, WUI was advised by the Commission's Staff that it appeared Section 214 authority would be a necessary prerequisite to offering DBS.[1] By letter dated October 1, 1976, WUI requested a summary grant of "temporary authority" to institute DBS. Objections to any such peremptory grant of authority have been filed by Graphnet, Telenet, AT&T and others.

3. The captioned formal application is WUI's first recognition of the Commission's normal authorization processes. It purports to request authority to provide the services described in WUI's earlier filings, and embodied in the still-pending Transmittal No. 1073 tariff revisions. Graphnet has addressed in detail WUI's request for temporary authority in prior pleadings. In those pleadings, Graphnet has pointed out fundamental issues which the DBS proposal raises, and which must be resolved before the grant of any Commission authorization for DBS. To the extent the captioned application adds little to what WUI has already expressed in its other filings, Graphnet will not undertake to repeat its earlier contentions herein. Instead, the arguments contained in Graphnet's earlier filings with the

---

[1] That advice was confirmed by a November 12, 1976, Staff letter ruling.

Commission[2/] are incorporated herein by reference, and should be considered in the context of the captioned application as well.

4. As pointed out in Graphnet's earlier filings, the threshold problem is that the basic nature of the proposal remains sufficiently unclear that an informed public interest judgment simply cannot yet be made. In light of WUI's studied equivocation, it is uncertain with which entity, Tymshare or Tymnet, WUI will be dealing to implement DBS, and on what basis. Reversing its initial claims, WUI has more recently denied the proposal to be a carrier-to-carrier arrangement with Tymnet. Yet, as pointed out in Graphnet's earlier pleadings, the type of carrier/customer relationship between WUI and Tymshare as WUI currently claims presents serious rebate questions.

5. Moreover, the details of the understandings which underlay the proposal have yet to be clearly known. The nature of WUI's arrangements with correspondents remains a question. While WUI has generalized its willingness to entertain "similar arrangements" with "other entities," it is equally uncertain whether the type of arrangement contemplated by the captioned proposal will in fact be available to others on a non-discriminatory basis.

[2/] "Petition to Deny," filed October 15, 1976; "Reply on Behalf of Graphnet Systems, Inc.," filed November 18, 1976. Letters to the FCC from counsel for Graphnet dated October 15, November 2 and November 17, 1976.

6. These and other serious issues cannot be resolved without the type of additional information which Graphnet and others have shown to be necessary to a clear understanding of the service arrangement involved. And until such details are furnished, the Commission cannot prudently grant the authority requested. Since the time of WUI's initial tariff filing, various parties have specified the kind of information which should be furnished concerning DBS. WUI has thus far declined to provide that data. In light of WUI's approach thus far, Graphnet submits that the views of Tymnet and/or Tymshare are now a necessary prerequisite to any favorable action on the WUI proposal. As a starting point, the Staff should immediately request that those entities file their views of the contractual relationship involved, together with a detailed description of how they contemplate that the proposed arrangement with WUI will be implemented. To do less at this point would leave both the Commission and interested parties without any of the basic information necessary to fairly evaluate the application involved.

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

By Edward P. Taptich
Edward P. Taptich

McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

Its Attorneys

December 22, 1976

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In the Matter of)
)
WESTERN UNION INTERNATIONAL, INC.) File No. I-T-C-2658
)
Application for Authority, Pursuant)
To Section 214 of the Communications)
Act, to Provide "Database Service")

To: The Commission

SUPPLEMENT TO COMMENTS ON BEHALF OF GRAPHNET SYSTEMS, INC.

On December 22, 1976, Graphnet Systems, Inc. (hereinafter "Graphnet"), filed comments concerning the captioned application by Western Union International, Inc. (hereinafter "WUI"). On December 23, 1976, the Commission released a Memorandum Opinion and Certificate granting an application by Tymnet, Inc., for authority to provide certain communications common carrier services. Tymnet, Inc., ___ F.C.C.2d ___ (File No. W-P-C-927; FCC Mimeo No. 76021). Graphnet hereby supplements its December 22nd comments in light of the Commission's Tymnet decision.

1. In its December 22, 1976, Comments herein, Graphnet pointed out what it had earlier contended in detail[1/] -- that it was unclear whether WUI was proposing to deal with *Tymnet* on a carrier-to-carrier basis, or with *Tymshare* on a carrier-customer basis. Either alternative, it was shown, raised distinct -- and in some respects, serious -- issues. Yet WUI had failed to clarify the matter, having first proposed to deal with *Tymnet* as a *carrier*, while later repudiating that claim in favor of an asserted arrangement with *Tymshare* as a *customer*.

2. One portion of the Commission's *Tymnet* decision serves both to compound the uncertainties WUI has created, and to compel a pursuit of further information regarding the captioned WUI proposal. In the course of transiting from its "we're dealing with Tymnet" position to its later "we're dealing with Tymshare" claim, WUI covered the middle ground as well:

> WUI anticipates that its agreement with Tymshare, Inc. will be assigned to Tymnet, Inc. upon the latter's receipt of authority to acquire the communications network of Tymshare and operate as a common carrier . . . . [2/]

[1/] See, e.g., "Reply on Behalf of Graphnet Systems, Inc.," filed November 18, 1976, in connection with WUI's related request for temporary authority to provide DBS service.

[2/] Letter to the Commission from WUI, dated November 2, 1976, p. 2, fn.

In the December 23rd Tymnet decision, however, the Commission recited the following (¶6):

> . . . Tymnet states that no contract, agreement, arrangement, or understanding exists between it and Tymshare relating directly or indirectly to the provision of service, except an agreement by Tymshare to provide capital to Tymnet.

3. If there is in fact "no . . . understanding . . . between [Tymnet] and Tymshare relating directly or indirectly to the provision of service," on what did WUI earlier base its "anticipation"? Does Tymnet in fact have no "understanding" with Tymshare concerning any "provision of service" in connection with DBS? Even more basically -- and quite aside from the precise verbiage in WUI's prior filings and the Tymnet decision -- what in fact will be the interrelationship of Tymshare, Tymnet and WUI in the implementation of DBS?

4. Clear, direct answers to these questions are essential prerequisites to any informed public interest judgment on the captioned application. To the extent WUI had declined to provide them to that point, Graphnet's December 22nd comments herein urged the Commission to solicit from Tymshare and Tymnet a description of what they contemplate their respective roles in WUI's DBS offering to be. In Graphnet's view, the recent Tymnet decision reinforces the need for such an approach. If, as WUI "anticipates," Tymshare will be assigning some portion of its arrangement with WUI to Tymnet, it is now incumbent on Tymnet to clarify whether any "understandings" in that regard do in fact

exist between itself and Tymshare. Moreover, to the extent there are any such "understandings," it appears equally necessary that Tymnet clarify the consistency of the existence of such understandings with the representation recited, and relied on, by the Commission in the above-quoted portion of its December 23rd Tymnet decision.

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

By Edward P. Taptich
Edward P. Taptich

McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

Its Attorneys

December 29, 1976

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
WESTERN UNION INTERNATIONAL, INC.) File No. I-T-C-2658
)
Application for Authority to Provide "Database Service" Between the United States and the United Kingdom)

To: The Commission

PETITION TO DENY

Telenet Communications Corporation (hereinafter "Telenet") hereby petitions the Commission to deny the above-captioned application of Western Union International, Inc. (hereinafter "WUI") for authority to offer a so-called "Database Service" ("DBS") between the United States and the United Kingdom, stating as follows:

I. Summary of Position and Background

It is Telenet's position that the WUI application is fatally defective in that in its operational and technical aspects the DBS proposal (a) seriously discriminates in favor of one domestic value-added carrier -- Tymnet, Inc. -- over the other competing domestic carriers, and (b) at least potentially, as far as can be determined from presently-available information, it discriminates in favor of one data processing service firm -- Tymshare, Inc. -- over the other competing members of the computer services industry. Moreover, in its present status the agreement between WUI and Tymshare apparently contemplates the provision by Tymshare of domestic communications service to the public to and from WUI's gateway - an undertaking which would be clearly illegal for Tymshare, an unregulated entity, to perform. On the other hand, the WUI/Tymshare agreement may be assigned to a common carrier, Tymnet, Inc., but WUI has given no assurances that such assignement will occur or that Tymshare will thereupon step out of the picture.

The instant application incorporates by reference WUI's Transmittal Letter No. 1073, dated September 24, 1976, whereby WUI sought to amend its Tariff FCC No. 11 (Overseas Datel Service); WUI's letter of October 1, 1976, which, inter alia, sought temporary authority to offer the proposed DBS; and WUI's letter of November 2, 1976, purporting to respond to objections theretofore filed with respect to WUI's tariff amendment and request for temporary authority.

In order that the Commission's files may be complete on this matter, Telenet hereby incorporates by reference its "Petition to Reject and Deny", filed October 18, 1976, which was directed to both the September 24 tariff amendment and the October 1 request for temporary authority; and Telenet's November 12, 1976 "Reply" to WUI's November 2, 1976 letter.

As previously pointed out by Telenet in the referenced filings, WUI's attempts to offer its DBS service have been marked by a lack of forthrightness. Whereas its September 24 transmittal represented to the Commission that WUI had entered into an agreement with Tymnet, Inc., for the provision of the proposed service, it was revealed for the first time in WUI's November 2 filing that its agreement is in fact with Tymshare, Inc. - Tymnet's parent company. Most of the significant policy problems respecting the instant application revolve around the present and future relations between WUI and these two corporations, Tymshare and Tymnet. As the Commission is aware, Tymshare is one of the largest computer services companies, which for several years has operated an extensive data communications network called "TYMNET" and through such network has provided communications service to the public allegedly under the "joint use" provisions of AT&T's private-line tariff. Earlier this year, Tymshare formed Tymnet, Inc. as a subsidiary, and the latter company applied to the Commission for authority pursuant to Section 214 of the Communications Act to operate as a common carrier. The Commission, by the Chief of the Common Carrier Bureau, acting pursuant to delegated authority, recently granted Tymnet's application; Memorandum Opinion and Order, File No. W-P-C-927, released December 23, 1976.

As stated in its Section 214 application, Tymnet intends to acquire the TYMNET network facilities presently operated by Tymshare, and to utilize such network facilities in its offering of domestic common carrier service. Tymnet has stated that it intends to provide such service to Tymshare as a customer.[1/] However, Tymshare has entered into no agreement with Tymnet to purchase such service,[2/] and, more importantly, has not represented that it intends to cease operating communications facilities and providing service to "joint users" thereof. Although Telenet had previously complained to the Commission regarding Tymshare's "joint use" activities,[3/] and had argued that such activities constituted unlawful common carriage for which Commission certification was required, when the Commission granted Tymnet certification as a carrier it failed to expressly condition such certification upon Tymshare's cessation of all "joint use" activities of the nature the company has previously engaged in. One could fairly argue that the Commission assumed such cessation of Tymshare communications service as an implicit predicate for its grant of authority to Tymnet, but it is far from clear that Tymshare and Tymnet would agree.

1/ See letter from William M. Combs, President, Tymnet, to Walter Hinchman, Chief, Common Carrier Bureau, dated October 22, 1976, p.2.

2/ See letter from William M. Combs to Alex C. Latker, Acting Chief, Domestic Transmission Systems Branch, Common Carrier Bureau, dated December 2, 1976.

3/ See letter from Donald E. Ward, Telenet counsel, to Walter R. Hirchman, dated January 21, 1976.

The significance of the activities of Tymshare and Tymnet in the instant case derives from the fact that WUI has entered into an agreement with Tymshare, not Tymnet, to interconnect the proposed DBS facilities with Tymshare's facilities in order to provide international service to "Tymshare and its joint users."[4] In its letter of November 2, 1976, to the Commission, WUI states that it "anticipates" that such agreement will be assigned to Tymnet after the latter's receipt of common carrier certification, but WUI provides no assurance that such assignment will, in fact, occur.[5] Nor, apparently, could WUI furnish such assurance, for any such assignment would have to be made by Tymshare, and is beyond WUI's power to compel. Thus, who is Telenet - and the Commission - to assume WUI will be dealing with, in the provision of DBS service: Tymnet, Tymshare, or both? As will be explained in the following sections, each of these assumptions carries with it significant policy problems which compel denial of the DBS application in its present form.

Telenet is not alone in its concern for the type of arrangement which WUI and Tymshare have entered into. The

---

[4] WUI/Tymshare agreement dated August 10, 1976, para. 2.

[5] Letter from Kathryn E. McDonnell, WUI counsel, to Vincent J. Mullins, Secretary, FCC, dated November 2, 1976, p. 2, footnote 2.

Computer and Business Equipment Manufacturers Association (CBEMA) in its November 4 Petition for Rejection of Transmittal No. 173, and in its December 6 "Reply to Opposition", has detailed a number of serious questions arising out of the WUI-Tymshare agreement. Specifically, CBEMA points to "grave questions of unlawful rebates and illegal discrimination in favor of one customer" (Reply to Opposition, page 5); and to the utter failure of WUI to provide adequate technical information to permit any entity other than Tymshare to determine the conditions or requirements to be met by one other than Tymshare seeking a DBS connection. CBEMA's points are as pertinent to the instant application as they are to the pending tariff filing.[6/]

II. The DBS Proposal Involves Serious Discrimination In Favor of One Domestic Carrier At the Expense of the Competing Domestic Carriers.

On the assumption that WUI is correct in its "anticipation" that the WUI/Tymshare agreement will be assigned to Tymnet, or assuming a similar but separate agreement

---

[6/] Telenet wishes to express at this point its concern with the procedures by which the Commission apparently permits a tariff filing for an unauthorized service to remain on file pending the disposition of the later-filed application for §214 authority. Aside from introducing needless pleadings and regulatory confusion, the practice carries with it a real potential for misleading the public to believe that a service has been authorized when in fact it has not. Such misapprehension on the part of the public may, in fact, be encouraged by the putative carrier, as a means of discouraging the potential customer from acquiring service elsewhere, and is analogous to premature product announcements found in some contexts to constitute a form of unfair competition. The Commission's procedures should be tailored to avoid rather than encourage such practices.

between WUI and Tymnet should be entered into, Tymnet would be given a substantial unfair advantage over other domestic carriers, such as Telenet, with whom it competes. As it is presently structured, the DBS proposal is inherently discriminatory in favor of Tymnet, due to the fact that WUI proposes to implement DBS using computer switching equipment purchased from Tymshare, Inc., which (together with the proprietary operating software developed by Tymshare) will apparently be a "carbon copy" of similar equipment and software which form the basis of the TYMNET communications network operated by Tymshare/Tymnet.[7] The design and operational capabilities of this switching equipment and software are such that rapid and efficient interconnection of DBS to TYMNET will be possible - indeed, the DBS facilities will simply operate as an extension of TYMNET, under control of the TYMNET supervisor - but similar interconnection to Telenet's network or that of any other value-added carrier will be technically impossible, at least in the near term.

---

[7] Although the essence of any computer-based data communications network is the software utilized in its switching computers, the WUI-Tymshare agreement is noteworthy for its complete failure to mention software. While the following discussion necessarily assumes that the software for DBS will be identical to that currently used in the Tymnet network, the Commission should require that WUI come forward with specific information concerning its intentions, supported by copies of any agreements entered into with Tymshare, Tymnet, or any other party relating to the terms and conditions of WUI's use of software for DBS.

Both the packet-switching network operated by Telenet, and the packet-like "virtual line switching" network to be operated by Tymnet, are what is commonly known as "intelligent networks." By this term is meant that such networks provide the user with more than simple transmission bandwidth between two points; instead, they provide a switchable "virtual connection"[8/] offering much greater transmission efficiency for many applications, and they also provide a number of related capabilities such as code, speed and protocol conversion, and error control. The essence of such an intelligent network service, as seen by the user or by an interconnecting network, is the nature of the interface to the network, for this interface determines to a large extent what the network can do for the user and how well it can do it. Important parameters concerning such network interfaces include interface transmission speeds; full-duplex or half-duplex transmission capability; synchronous or asynchronous transmission modes; transmission code(s) used (ASCII, etc.); data link protocol used (BSC, SDLC, HDLC, etc.); throughput efficiency and transit time delay; whether the interface can support multiple simultaneous virtual connections (a "multiple-connection" interface), or only a single such connection at a time (a "single-connection"

[8/] Referred to as a "connection" in the following discussion of alternative means of network interface.

interface); and whether a communications line interface is available or on-site interface equipment is required.

It is Telenet's understanding that the communications processors utilized in TYMNET, such as the unit which WUI has agreed to purchase from Tymshare, have several different types of interfaces, as follows:

(1) A very efficient interface used between nodes in the TYMNET network, which is high-speed, (2400 baud and higher), synchronous, and multiple-connection in nature;

(2) A high-speed interface between TYMNET nodes and customer host (data processing) computers, which is also synchronous and multiple-connection in nature, but is different from interface no. (1) above;

(3) A low-speed (300 baud and lower) interface between TYMNET nodes and customer terminals and host computers, which is asynchronous and single-connection in nature; and

(4) A very high-speed (50,000 baud and higher) "channel-to-channel" interface between TYMNET nodes and Tymshare host computers, which is multiple-connection in nature and operates on a direct computer-to-computer basis for greater throughput and efficiency than interface no. (2) above.

The first three of these interfaces form the basis of the DBS discrimination in favor of TYMNET vis-a-vis other carriers; the fourth interface will be discussed in the Section III infra. In a nutshell, the problem is that TYMNET would be able to interconnect to the DBS processor using interfaces 1 and 2, since its equipment and the DBS equipment are totally compatible, whereas Telenet and other carriers would, as a practical matter, be able to utilize only interface 3, if any. Interfaces 1 and 2 are each unique and proprietary to Tymshare/Tymnet, and the detailed technical parameters thereof have not been published to enable other carriers to develop compatible software. Moreover, interface 1 is tailored to the specific character-oriented network design utilized in the TYMNET network, and could not be programmed to interface efficiently with a true packet-switching network such as Telenet's.

Interface 2, although originally designed for host-to-network interconnection, could presumably also be used for network-to-network interconnection, such as between WUI and TYMNET. However, since it is non-standard and unpublished, no switching equipment other than that supplied and programmed by Tymshare/Tymnet is compatible with it. The international standard X.25 interface, on the other hand, which was adopted by the CCITT at its Plenary Assembly in Geneva in October 1976, could provide the basis for non-discriminatory interconnection between WUI and all domestic packet networks - *if* this interface protocol were supported by the DBS switching equipment and made available by WUI to the domestic carriers. In its November 2 letter to the Commission, WUI makes light of this possibility, demonstrating its ignorance of packet-switching technology in the process. WUI asserts that X.25 is "not applicable to the . . . interconnection of multiple networks",[9] perhaps unaware that (1) Telenet and the Trans-Canada Telephone Systems (TCTS) (the two organizations primarily responsible in North America for development of the protocol) plan to utilize X.25 as the means of interconnection between the Telenet network and the TCTS Datapac network in Canada; and (2) Upon the grant of its §214 application for service to the United Kingdom, I-T-C-2634, Telenet proposes to utilize X.25 as the means of interconnection between its network and the BPO facilities. Indeed, in its Petition to Deny Telenet's application, WUI termed such application "premature" because no CCITT recommendation had allegedly been developed regarding the interconnection of packet networks. If Telenet's proposal for service to the U.K. - which utilizes the CCITT standard interface protocol - is "premature", then WUI's - which could do likewise, but chose to ignore this international standard - is reactionary and obsolete.

---

[9] Letter from McDonnell to Mullins, *supra*, at p. 4.

Finding interfaces 1 and 2 unavailable to them due to incompatibility, and finding no standard X.25 interface at all, domestic carriers other than Tymnet who wish to interconnect with DBS would have only interface 3 potentially available. However, this interface is more costly in terms of transmission facilities and switching equipment required, since it is a "single-connection" interface which requires a separate physical channel for each simultaneous virtual connection to be handled. And more importantly, use of this low-speed (300 baud and below) interface for network-to-network interconnection, with attendant queuing and flow control delays in the two networks, would result in such a low throughput rate that Telenet estimates that the quality of service to the end user would be totally unacceptable.

The only cure for these problems is to deny the DBS application or, in the alternative, to require that, from the commencement of service, WUI interconnect with all domestic carriers only via X.25 or other CCITT-adopted standard interface protocols. If this requires some reprogramming of WUI's Tymshare-provided communications processor, or the acquisition by WUI of alternative equipment, so be it; the absence of such a requirement - even for an interim period of time - would result in gross inequity to Telenet and other domestic competitors of Tymnet, and cannot be permitted to occur.

III. The DBS Proposal May Also Involve Discrimination in Favor of One Data Processing Service Vendor At the Expense of Other Competing Vendors.

As discussed in Section I above, it is not clear that Tymshare will disappear from the scene as a party to an interconnection agreement with WUI. If Tymshare remains as such a party and is dealt with by WUI "as a customer in its own right", as previously stated by WUI[10/], additional serious discrimination issues arise. Some of these issues have already been raised by CBEMA in its "Petition for Rejection of Tariff" filed November 4, 1976, and its "Reply to Opposition", filed December 6, 1976, respecting WUI's Transmittal No. 1073 for DBS service, and need not be repeated here. However, Telenet would like to further particularize CBEMA's concern regarding the potentially discriminatory nature of interconnection between WUI and Tymshare.

It will be recalled that on page 9 , *supra*, four different types of interfaces to the Tymshare-supplied DBS processor were summarized. The significance of the first three of these was discussed in Section II. Interface 4,

---

[10/] *Id.*, at p. 2

however, which is used to connect Tymshare's host computers to the TYMNET network, is of particular significance if direct relationships exist between Tymshare and WUI. Would WUI offer this very efficient means of DBS access to Tymshare, and if so, would it also be available on comparable terms to other data processing service vendors? The answer to the former question may be affirmative, unless the Commission bars it, but Telenet suspects that the answer to the latter - in practice, at least - would be negative. The expense and difficulty of a non-Tymshare host programming such an interface, the attendant time delays involved, and the necessity of costly on-site equipment, all militate against the likelihood of non-discriminatory results even if WUI nominally offers such an interface option to all of its DBS customers. At the very least, the matter requires careful Commission consideration, and detailed information from WUI concerning its interface plans and the steps it intends to take to ensure non-discriminatory treatment of all DBS users - information which certainly was not forthcoming in WUI's privious smug pronouncements on the subject.

Additionally, the DBS inherently discriminates against data processing service companies other than Tymshare in that Tymhsare hosts are already connected to Tymnet via a highly efficient channel interface and interface specifications for other data processing vendors have not yet even been published.

A separate but related issue concerns the potential use by WUI of certain overseas Tymshare facilities as backup for, or augmentation of, the DBS facilities specified in the instant application. It is Telenet's understanding that Tymshare (perhaps through or in conjunction with its UK-based subsidiary company) presently operates a leased channel between the TYMNET network in the US and a compatible communications processor in the UK, and that Tymnet plans to continue using such facilities after DBS service is commenced. Apparently, it would be technically possible for WUI to utilize such Tymshare facilities as a means of backup in the event of outage of the DBS facilities, or perhaps even to handle traffic overloads during peak periods. No mention of such possibility is made in WUI's application, however, perhaps due to the serious policy problems - such as resale of communications capacity by an unlicensed entity, as well as a further element of discrimination in favor of one user - which such activity would raise. The Commission should not rely upon such absence from the application as assurance that WUI will not engage in this practice: any grant of the application should expressly limit WUI to utilization in any manner of only the facilities applied for, and none other.

IV. Conclusion

As discussed above, and as pointed out in detail by CBEMA, WUI has refused to come forward with any specifics as to how domestic carriers other than Tymnet are to interconnect with its proposed service, and what interface protocols would be available for use; it has rejected use of the X.25 international standard protocol adopted by the CCITT, which would substantially alleviate - if not cure altogether - the problem of discrimination in favor of Tymnet; and it has failed to explain in any meaningful way its claim that -- although it proposesto utilize Tymshare-provided equipment and software, and proprietary Tymshare interface protocols -- it will nonetheless avoid any discriminatory behavior. Telenet submits that were the Commission to authorize DBS on the basis of the materials before it, serious discrimination in favor of one domestic carrier and one user would result, to the detriment of the public interest, and the Commission would also implicitly undermine the efforts of the CCITT and of telecommunications administrations around the world to standardize means of connection to and between public packet networks.

Respectfully submitted,

TELENET COMMUNICATIONS CORPORATION

By: Philip M. Walker
Philip M. Walker
Vice President & General Counsel
1050-17th Street, N.W.
Washington, D.C. 20036

By: Donald E. Ward
Donald E. Ward
Law Offices of Donald E. Ward
1050-17th Street, N.W., Suite 840
Washington, D.C. 20036

December 27, 1976

Its Attorneys

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

KATHRYN E. McDONNELL
Attorney

Telephone (212) 363-5812

December 28, 1976

Mr. Vincent J. Mullins
Federal Communications Commission
Washington, D.C. 20554

Re: Tymshare/Tymnet Assignment

Dear Mr. Mullins:

Enclosed for filing with the Commission is a copy of an assignment from Tymshare, Inc. to Tymnet, Inc. of the agreements, dated August 10, 1976 and November 1, 1976 between the former company and Western Union International, Inc. (WUI) providing for access to WUI's proposed overseas data transfer network.*

This assignment, which has been consented to by WUI, is a result of Tymnet's recent attainment of common carrier status and subsequent purchase of the components of Tymshare's shared user network.

Very truly yours,

Kathryn E. McDonnell

Enclosure
KEM:jah

---

*These agreements were filed with the Commission as Attachment II to WUI's letter, dated November 2, 1976, in connection with WUI's proposed Database Service.

ASSIGNMENT

THIS AGREEMENT is made and entered into as of the 22nd day of December 1976, by and between TYMSHARE, INC., a California corporation (hereinafter "Tymshare") and TYMNET, INC., a California Corporation (hereinafter "Tymnet").

WITNESSETH:

WHEREAS, on the 10th day of August 1976 Tymshare and Western Union International, Inc. (hereinafter WUI), entered into an agreement whereby Tymshare and its joint users can connect with WUI overseas data transfer network, and

WHEREAS, Tymshare and WUI mutually agreed upon the rates for such use of the data transfer network by means of a letter agreement dated November 1, 1976, and

WHEREAS, Tymshare now wishes to assign the Agreement between Tymshare and WUI to Tymnet.

NOW THEREFORE, in consideration of the foregoing, and of the mutual agreements set forth, the parties agree as follows:

Effective the date hereof, Tymshare hereby conveys, transfers, and assigns all of its rights, title and interest in the Tymshare/WUI Agreement dated August 10, 1976 and the letter dated November 1, 1976, to Tymnet in consideration of One Dollar ($1.00), the receipt whereof is hereby acknowledged. To have and to hold the same for the benefit of Tymnet, its executors, administrators and assigns

IN WITNESSETH WHEREOF, the parties hereto have executed the Assignment by their duly authorized representatives.

TYMSHARE, INC.

By: Warren F Prince
Warren F. Prince

TYMNET, INC.

By: William M. Combs
William M. Combs

Consented to:
WESTERN UNION INTERNATIONAL, INC.

By: Serge Wernikoff
Serge Wernikoff

Western Union International, Inc.
ONE WUI PLAZA · New York, N.Y. 10004

[illegible]
Attorney

Telephone (212) 363-5812

December 29, 1976

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: WUI's Database Service
File No. I-T-C-2658

Dear Mr. Mullins:

Western Union International, Inc. (WUI), on November 9, 1976, filed a formal application to provide overseas access to and from database computers and remote computing services. (DBS Application) The DBS Application was put on public notice on November 22, 1976 with a 30 day period within which interested parties might file comments. Comments were received from five entities.*

WUI has put forth all its arguments in previous pleading cycles and believes no purpose would be served by submitting a response to the cited documents.

The United Kingdom Post Office is anxious to commence Database Service between the United Kingdom and the United States as soon as possible.

WUI believes that the public interest and international comity will best be served by closing the pleading cycle with respect to WUI's DBS Application and, thus, permitting an expeditious grant of same.

---

*Graphnet Systems, Inc. (Graphnet) filed "Comments", dated December 22, 1976; the Association of Data Processing Service Organizations (ADAPSO) filed a "Petition to Deny Unless Conditioned", dated December 22, 1976; American Telephone and Telegraph Company (AT&T) filed "Comments", dated December 22, 1976; the Computer and Business Equipment Manufacturers Association (CBEMA) filed a "Response", dated December 22, 1976 and Telenet Communications Corporation (Telenet) filed a Petition to Deny, dated December 27, 1976.

Accordingly, WUI hereby waives its right to respond to the cited documents with respect to its formal DBS Application and urges an expeditious grant of said Application prior to the January 20, 1977 effective date of WUI's Database tariff.

Respectfully submitted,

Kathryn E. McDonnell

KEM:jah
cc: Graphnet Systems, Inc. - E. Taptich, Esq.
ADAPSO - H. E. Marks, Esq.
AT&T - R. B. Lowe, Esq.
CBEMA - J. M. Kittner, Esq.
Telenet Communications Corp. - D. Ward, Esq.
Communications Satellite Corp. - W. K. Coulter, Esq.
ITT World Communications, Inc. - M. E. Hedborg

Law Offices of Donald E. Ward

Suite 840
1050 Seventeenth Street
Northwest

Washington, D.C.
20036

(202) 833-1717

December 29, 1976

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Western Union International, Inc.
Transmittal No. 1073 of
September 24, 1976, and Request
For Temporary Authority Dated
October 1, 1976, Regarding
"Database Service"

Dear Mr. Mullins:

There are currently pending before the Commission three interrelated filings by Western Union International, Inc. (hereinafter "WUI"). These consist of

(1) Transmittal No. 1073, dated September 24, 1976, whereby WUI sought to amend its Tariff FCC No. 11 to offer a new "Database Service" (hereinafter "DBS");

(2) WUI's letter of October 1, 1976, requesting temporary authority in lieu of §214 authority to offer the proposed DBS service; and

(3) WUI's application filed November 9, 1976, seeking formal §214 certification for the DBS service.

Each of these has been the subject of comments and petitions by numerous parties.

On December 27, 1976, our client, Telenet Communications Corporation, filed its "Petition to Deny" the November 9 WUI application for formal §214 certification, and a copy of that petition is attached hereto for ease of reference. Therein, Telenet points out the serious discrimination which would arise in the event that the Commission were to authorize DBS as currently proposed. Briefly stated, such discrimination arises out of the fact that WUI's proposed DBS offering is based on a computer-based technology developed by a major data processing service company, Tymshare, Inc., which (a) would make available to Tymshare a form of interconnection, or interface, not available to other data processing service companies, and (b) make available to Tymnet, Inc., a recently-certificated domestic "resale" carrier, interconnection not available to other domestic communications common carriers.

It is believed that the matters urged in Telenet's Petition to Deny are equally valid with regard to the referenced Transmittal 1073 and to WUI's October 1 Request for Temporary Authority. Accordingly, it is requested that the attached petition be regarded as a supplement to Telenet's October 18 "Petition to Reject [Transmittal No. 1073] and Deny [the October 1 Request for Temporary Authority]".

Telenet also submits that, with the filing of WUI's November 9 application for formal §214 certification, the request for temporary authority should be dismissed as moot, and as having been subsumed within the application for formal certification. Serious public interest questions have been raised, not only by Telenet, by by Graphnet and CBEMA, both of whom have also filed pleadings concerning WUI's November 9 application. In view of the pendency of these questions, it would be procedurally inappropriate for the Commission to authorize WUI to provide a DBS service, even on a "temporary" basis, without fully considering and disposing of the matters discussed in the pending petitions.

Not only would such a "temporary" authorization be inequitable to entities such as Telenet and Graphnet, whose formal §214 applications for the provision of international services substantially predate WUI's initial DBS filing - the grant of WUI's request for temporary authorization would affirmatively disserve the public interest, through the creation of a discriminatory interconnection arrangement to the detriment of all data processing service companies except Tymshare, Inc., and all domestic data carriers except Tymnet, Inc.

It is accordingly urged that the above-referenced filings of WUI, Inc. be dismissed as subsumed within WUI's November 9 application for formal §214 certification.

Very truly yours,

Donald E. Ward

Donald E. Ward

Counsel to Telenet
Communications Corporation

DEW/kt

cc (w/encl):
Hon. Richard E. Wiley
Hon. Robert E. Lee
Hon. Benjamin L. Hooks
Hon. James H. Quello
Hon. Abbott Washburn
Hon. Margita White
Hon. Joseph Fogarty

cc (w/o encl):
Walter R. Hinchman, Chief
Common Carrier Bureau
Robert Michelson, Esq.
Ms. Kathryn E. McDonnell (WUI)

Joseph M. Kittner, Esq.,
Ms. Virginia S. Carson, and
John S. Voorhees, Esq. (CBEMA)

Edward P. Taptich, Esq. (Graphnet)

William K. Coulter, Esq.(Comsat)

LAW OFFICES
McKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
(202) 296-1600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS N. FROHOCK
CARL R. RAMEY
EDWARD P. TAPTICH
NORMAN P. LEVENTHAL
JAMES R. COOKE
STEVEN A. LERMAN
VIRGINIA S. CARSON
JOHN J. SMITH

December 29, 1976

Walter R. Hinchman, Chief
Common Carrier Bureau
Room 500
Federal Communications Commission
Washington, D. C. 20554

Re: Western Union International, Inc.
(Database Service)
Transmittal Nos. 1073, 1094;
File No. I-T-C-2658

Dear Mr. Hinchman:

This letter is submitted on behalf of Graphnet Systems, Inc. Its purpose is twofold: (1) to memorialize, for the record, certain recent events relating to Western Union International, Inc.'s pending Database Service (DBS) proposal; and (2) to request clarification of the Bureau's intended future procedures in that regard.

As you know, WUI's DBS proposal has been the focus of controversy for more than three months. Following apparent Staff advice that DBS was not contemplated by its existing certificate authority, WUI requested a summary grant of temporary Section 214 authority by letter dated October 1, 1976. That request was promptly opposed by Graphnet 1/ and Telenet. 2/ AT&T has more recently joined that opposition. 3/ Subsequently, WUI filed a formal Section 214 application for DBS. (I-T-C-2658, filed November 9, 1976.) That application is likewise the subject of a variety of pleadings filed recently by Graphnet, Telenet, CBEMA and ADAPSO.

1/ "Petition to Deny," filed October 15, 1976.

2/ "Petition to Reject and Deny," filed October 18, 1976.

3/ "Petition to Deny," filed December 10, 1976.

The current controversy was initially sparked, of course, by WUI's having sought to implement DBS by simply filing revisions to its Overseas Datel tariff. (WUI Transmittal No. 1073, filed September 24, 1976.) Those tariff revisions, intitially scheduled to become effective December 22, 1976, were objected to in October and November by Telenet and CBEMA, respectively. WUI responded to those requests for rejection and/or suspension, and issues in that regard are currently pending.

Early in the course of pleading litigation, certain basic questions arose concerning the pending tariff revisions. Among other things, it was argued that rejection of the tariffs was required since WUI lacked necessary Section 214 authority to provide DBS. But in addition to such legal issues, the matter of what action would be taken if no Section 214 authority were granted by the tariffs' proposed effective date also became the focus of attention. The objecting parties all contended that the absence of Section 214 authority was a sufficient ground to summarily reject the tariffs well in advance of their December 22, 1976, effective date. But in any event, it was uniformly indicated, rejection of the tariffs would be required not later than December 21st if some form of Section 214 authority were not granted WUI by that date. 4/

The Bureau's November 12, 1976, letter to WUI seemed to reflect the same notion:

> [I]f Section 214 authority is not forthcoming by [December 22, 1976] the tariff will be rejected unless you have requested that the date of its effectiveness be extended.

Since the Bureau's observation also suggested that WUI might be permitted to avoid rejection by the simple expedient of deferring the effective date, however, Graphnet objected by letter of counsel to the Bureau dated November 17, 1976. Moreover, to the extent WUI might accept the Bureau's implied offer, Graphnet had earlier stated its position that, in light

---

4/ See, e.g., CBEMA's "Reply to Opposition," filed December 6, 1976, n. 1.

of the pending controversy, any WUI efforts to alter the effective date could fairly be considered only with notice to other parties and an opportunity to be heard:

> Given the present procedural circumstances . . . what is at least clear is that any requests by WUI for special permission should be served on Graphnet and any other interested party. And no unilateral affirmative action on such a request can now properly be taken before such parties have had a reasonable opportunity to be heard. 5/

Against this background, Graphnet's counsel initiated a telephone inquiry to the Staff on December 22, 1976, to ascertain the status of the WUI tariff revisions. As a result of that inquiry and subsequent investigation, it is Graphnet's understanding that the Bureau contacted WUI by telephone during the week of December 13, 1976. Thereafter, on December 16, 1976, WUI requested special permission to defer the effective date of the DBS tariffs to January 20, 1977. 6/ By letter dated December 17, 1976, WUI's request was granted. And by Transmittal No. 1094, filed December 20, 1976, WUI submitted tariff changes to effectuate a deferral of the DBS tariffs to January 20th.

Graphnet was served with none of the written materials, and was advised of neither the fact nor the content of any oral communications. It is Graphnet's understanding that Telenet and CBEMA were likewise not served any of the materials involved. As a consequence, Graphnet and other interested parties had the opportunity neither to be heard on the matter, nor to know the

---

5/ Graphnet "Petition to Deny," filed October 15, 1976, pp. 15-16.

6/ The request stated, in part:

> In an informal discussion with FCC Staff it has been suggested the new Database tariff offering be deferred for 30 days in order to allow more time within which to evaluate the filing. Therefore, waiver of Sections 61.58 and 61.59 are [sic] respectfully requested for this purpose.

basis for the Bureau's seeming reversal of prior holdings that rejection is required where not-yet-effective tariff offerings lack underlying Section 214 authority.

Deferral of the DBS tariffs to January 20th -- and hence WUI's temporary avoidance of rejection -- seems now to be a fait accompli. However, it is requested that the Bureau clarify the procedures which will apply in the future concerning the pending DBS tariffs. First, Graphnet submits, processes for any future WUI deferral requests should be made clear, in the event Section 214 authority is not granted WUI by January 20, 1977. From the outset, of course, Graphnet's position has been that the tariffs should be rejected if it were determined that WUI lacked necessary Section 214 authority -- a determination made in the Bureau's November 12, 1976, letter to WUI. And as a result, Graphnet submits that no deferrals are legally appropriate. However, if any further requests for special permission to extend the DBS tariffs beyond January 20th are to be entertained, and in light of the special circumstances involved here, basic administrative fairness requires prior notice and an opportunity for interested parties to be heard. To that extent, Graphnet proposes that WUI be required to file any request for special permission to further defer the DBS tariffs not later than January 10th, that service by hand delivery on other interested parties be required, and that other parties be given not less than 5 business days thereafter to submit any comments.

Second, even if WUI is granted some form of Section 214 authority by January 20th, procedural clarification is required nonetheless. Graphnet's November 17, 1976, letter of counsel to the Bureau pointed out that, because the DBS tariffs were being permitted to remain on file, it might be argued later by WUI that interested parties were foreclosed from filing any post-Section 214 grant objections to the tariffs. Graphnet both posed the problem, and suggested the solution, in the following terms:

> . . . The Commission's Rules prescribe particular timetables for the filing of pleadings directed to tariffs. In the case of tariffs filed on 60 (or more) days' notice, for example, Section 1.773(b) of the Commission's Rules requires that petitions for suspension be filed 35 days in advance of the tariffs' proposed effective date. And in the context of the

referenced WUI tariff revisions, suspension requests would be due today.

Since the threshold question whether Section 214 authority will be granted WUI at all has not yet been resolved, Graphnet submits that it is grossly unfair to require it, or any other interested party, to devote the time and bear the expense of preparing formal, detailed objections to tariffs which may never become effective. Moreover, because of the entirely unclear nature of the WUI proposal -- particularly the nature of the WUI/Tymshare/Tymnet relationship -- it is far from certain that the final form of any implementing tariffs (assuming 214 authority is ultimately granted) will be the same as those filed by WUI in September.

In Graphnet's view, if WUI's tariffs are not now rejected, and if WUI is ultimately granted some form of 214 authority for its DBS service, all interested parties should be permitted a reasonable time thereafter to file either rejection or suspension requests directed to those tariffs. Only then will the dimension of WUI's authority be known, and only then can the tariffs -- perhaps modified in such form as WUI or the Commission may feel necessary -- be evaluated, and measured against the authorization granted. To the extent necessary to implement such an approach, the Commission should now waive the requirements of Section 1.773(b) of the Rules with respect to the captioned tariffs, and specify an alternative timetable -- one tied to the date of action on WUI's application for authority.

Graphnet hereby renews its request that the Bureau make clear that, if any Section 214 authority is ultimately granted WUI, interested parties will be afforded a reasonable period of time thereafter -- and prior to the effectiveness of any implementing WUI tariffs -- within which to present suspension or rejection requests.

Respectfully submitted,

Edward P. Taptich

Edward P. Taptich
Counsel for Graphnet Systems, Inc.

cc: All Filing Parties

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of RCA GLOBAL COMMUNICATIONS, INC. Application for such modification of its existing authorizations under Section 214 of the Communications Act of 1934, as amended, as may be necessary to use its previously authorized overseas communications facilities for the provision of an enhanced class of Overseas Datel Service (Datel II).	File No. I-T-C-2657

REPLY

American Telephone and Telegraph Company (AT&T) hereby submits its Reply to the Reply* of RCA Global Communications, Inc. (RCA) to the Comments filed by AT&T with respect to the Application of RCA for authority to use its overseas communications facilities for the provision of an enhanced class of overseas Datel Service called Datel II. In support of its Reply, AT&T respectfully shows:

1. AT&T's Comments of December 1, 1976 restated its view that any interconnection requirements of RCA for

---

* Although RCA's pleading was entitled "Reply", it is assumed that it was filed as an Opposition to AT&T's Comments. See, e.g., 47 CFR §1.45.

the provision of Datel II which contemplated "operational and financial parity", as previously described by RCA, would be technically infeasible, detrimental to AT&T's service requirements and contrary to the Commission's Order in Docket No. 19558*. Moreover, AT&T stated that it would be manifestly unfair to permit RCA to offer Datel II prior to Commission action on AT&T's Application for DATAPHONE** transmission to overseas points. In this regard, AT&T questioned the appropriateness of the grant of temporary authority to RCA for the provision of Datel II in light of the Commission's Order in Docket No. 19558 and AT&T's pending Application.

2. In reponse, RCA argues that Datel II will initially be offered only by direct subscriber tielines and therefore AT&T's objections to "operational and financial parity" are premature and irrelevant. RCA also stated that it would not be unfair to grant the instant Application prior to Commission action on AT&T's Application because Datel II is intended to serve a specialized market and is not directly competitive with DATAPHONE transmission on AT&T's message telecommunications service (MTS). AT&T submits that the issue of interconnection directly bears upon the consideration to be given to RCA's Datel II offering and that the question of whether Datel II and DATAPHONE transmission are directly competitive is not germane to the issue of fairness.

---

* 57 F.C.C. 2d 705 (1976).

** DATAPHONE is a registered servicemark of the AT&T Co.

3. RCA states that a request to provide Datel II by interconnection with domestic networks is not presently incorporated in its Application. However, RCA's Application is premised, in part, upon the intention that, at an early date, access will be provided "through appropriate interconnections with domestic networks".* The Commission must pass on the merits of the Application as expressed within its four corners and neither the Commission nor the interested carriers should be expected to surmise RCA's intentions regarding interconnection. Without more, AT&T is relegated to mere conjecture as to the phrase "appropriate interconnections" and appropriately objects to any interconnection proposal which seeks "operational and financial parity".**

4. Although RCA states that Datel II is designed to implement its statements in Docket No. 19558 and "is intended to serve a specialized market,"*** it contends that fairness only applies to those services which are in direct competition with AT&T's service. AT&T's request for basic fairness is not predicated solely on the competitive effects of RCA's enhanced data service but rather on the need to approach each application on equal grounds. Both applications were filed pursuant to the mandate of the Commission's January 19, 1976 Order in Docket No. 19558.****

---

* RCA Application, p. 2.

** See AT&T Comments, para. 3-6, pp. 2-4.

*** RCA Reply, p. 4.

**** 57 F.C.C. 2d at 712.

AT&T's Application for DATAPHONE transmission to overseas points has been before the Commission for more than eight months and no action has been taken on it. It would be unfair from a procedural standpoint to grant RCA's Application which was recently filed on October 20, 1976 while at the same time delaying action on AT&T's requested authorization. Therefore, regardless of the competitive aspects of the respective services, basic fairness requires similar treatment of both RCA's and AT&T's Applications. Moreover, to the extent that the services compete with each other, it would be manifestly unfair to give RCA a "head start" in the marketplace by delaying action on AT&T's Application.

5. RCA also states that, in any event, its Application should be granted in light of its temporary, experimental nature and the Commission's encouragement to foster such developmental applications. However, a brief perusal of RCA's Application belies the temporary, experimental nature of its request. After recognizing that it has received temporary authority to provide Datel II*, RCA's Application continues by stating that "RCA Globcom hereby requests such appropriate modification of its existing authorizations... for the provision of a high-speed switched data transmission service (Datel II)"**. Although RCA indicated that Datel II will "initially" be offered "for a one-year experimental period",*** the Application is not limited to the initial experimental offering which has previously been authorized by the Commission.

---

* RCA Application, para. 5, p. 4.

** Id., para. 6, p. 4.

*** Id.

6. Lastly, RCA takes issue with AT&T's statement as contained in its Comments that Datel I, an enhanced data service, must be inaugurated by filing a formal Section 214 Application. While the Commission's Order in Docket No. 19558 noted that there would be substantial differences between the offerings of the international record carriers (IRCs) such as the enhanced Datel services and AT&T's overseas DATAPHONE transmission* the Commission required both AT&T and the IRCs to file formal Section 214 Applications for authorization to provide their respective services. AT&T complied with this directive. RCA, on the other hand, has sought to offer a specialized data service tailored to the needs of individual customers by merely filing a tariff amendment. Although AT&T agrees with RCA's statement that "charging the rates and/or terms under which an existing service is offered" is normally accomplished by means of tariff revisions,** the Commission, in Docket No. 19558, expressly directed the carriers to file Section 214 Applications for their respective services. Thus, RCA's argument that AT&T's position in this regard "is totally without support and contrary to [AT&T's] own

---

* 57 F.C.C. 2d at 707, 709, 711.

** RCA Reply, p. 5.

practices" falls by its own weight.* Certainly AT&T could not have amended its existing F.C.C. Tariff No. 263 to permit DATAPHONE transmission to overseas points in light of the Commission's decision in the DATAPHONE proceeding. Accordingly, RCA should not be permitted to bypass the Commission's decision and should be directed to file a Section 214 Application for the provision of Datel I.

Respectfully submitted,
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

By ______________________
Edgar Mayfield

By ______________________
Alfred G. Walton

By ______________________
Randall B. Lowe

Its Attorneys
32 Avenue of the Americas
New York, New York 10013

DATED: January 3, 1977

---

* RCA stated that Datel I is directly competitive with AT&T's DATAPHONE Service. If so, RCA offers further support to AT&T's request that RCA also be required to file a Section 214 Application for Datel I.

LAW OFFICES
MCKENNA, WILKINSON & KITTNER
1150 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036
(202) 296-1600

JAMES A. McKENNA, JR.
VERNON L. WILKINSON
JOSEPH M. KITTNER
ROBERT W. COLL
THOMAS N. FROHOCK
CARL R. RAMEY
EDWARD P. TAPTICH
NORMAN P. LEVENTHAL
JAMES R. COOKE
STEVEN A. LERMAN
VIRGINIA S. CARSON
JOHN J. SMITH

January 11, 1977

Walter R. Hinchman, Chief
Common Carrier Bureau
Room 500
Federal Communications Commission
Washington, D. C. 20554

Re: Western Union International, Inc.
File No. I-T-C-2658

Dear Mr. Hinchman:

As you know, Graphnet Systems, Inc., has been an active participant in the various proceedings concerning Western Union International's "Database Service" (DBS). As you also know, both Graphnet and Telenet have pointed out WUI's prior failure to serve them with certain documents filed with the Commission in connection with the pending DBS litigation.

The purpose of this letter is to note, and object to, another such failing by WUI. By way of background, Graphnet, in its December 22, 1976, Comments on WUI's formal Section 214 application, squarely challenged the propriety of granting WUI's application until the actual nature of any planned operating relationships was known. As there pointed out (p. 3), "it is uncertain with which entity, Tymshare or Tymnet, WUI will be dealing to implement DBS, and on what basis." 1/ Since the legal issues potentially requiring resolution were dependent on the true nature of WUI's intent, Graphnet contended that the parties could not effectively identify or address the pertinent issues until such matters were clarified -- clarification which WUI had failed to provide.

Against this background, WUI, by letter dated December 28, 1976, transmitted to the Commission what

---

1/ The same basic point was raised in Telenet's December 27, 1976, Petition to Deny the referenced application.

purported to be copies of a December 22, 1976, assignment agreement between Tymshare and Tymnet relating to DBS. That filing, however, was not served on Graphnet or, Graphnet believes, on any other protesting party. 2/ And it was not until January 6, 1977, that counsel for Graphnet learned of the filing and obtained a copy from the Commission.

In Graphnet's view, WUI's failure to serve its December 28, 1976, letter and attachment on Graphnet and other parties was entirely improper. It was flatly violative of the Commission's procedural requirements. And even more basically, it was a prejudicial breach of other parties' fundamental entitlement to be heard on the matter prior to Commission action..

Very truly yours,

Edward P. Taptich

Edward P. Taptich
Counsel for Graphnet Systems, Inc.

cc: All Filing Parties

2/ A WUI letter dated December 29, 1976, was served on the parties, but made no reference to WUI's day-earlier filing.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of	
GRAPHNET SYSTEMS, INCORPORATED	File Nos. I-P-C-11 I-P-C-11A
For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.	
TELENET COMMUNICATIONS CORPORATION	File No. I-T-C-2634
For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	
RCA GLOBAL COMMUNICATIONS, INC.	File No. I-T-C-2657
For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	
WESTERN UNION INTERNATIONAL, INC.	File No. I-T-C-2658
For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	

To the Commission:

PETITION FOR PARTIAL RECONSIDERATION

RCA Global Communications, Inc. (RCA Globcom), pursuant to the provisions of Section 405 of the Communications Act of 1934, as amended, and Section 1.106 of the Commission's Rules and Regulations, hereby requests that the Commission reconsider its Memorandum Opinion, Order, Authorization and Certificate, FCC-77-2, released January 11, 1977 (Order), to the extent such Order authorizes Graphnet Systems, Inc. (Graphnet) and Telenet Communications Corporation (Telenet) to furnish international data telecommunications services directly to the various overseas points indicated in their respective applications.

If implemented, and they never may be,* the subject authorizations would bring into the international telecommunications market place two carriers heretofore providing only domestic data communications services for a brief period.** For reasons hereinafter set forth in detail, the authorizations grant to Graphnet and Telenet an unfair and unwarranted competitive advantage. To the extent the future ability of existing carriers to furnish their authorized public services is threatened by the unwarranted competitive preferences bestowed upon these applicants, and presumably others to follow, the Commission will have failed to meet its responsibility to regulate in the public interest. Further, the Commission has failed completely to consider in its Order various issues raised by RCA Glōbcom and others in pleadings addressing the Graphnet and

---

* Graphnet and Telenet were granted licenses in the absence of operating agreements with correspondents in the nations to which authorizations were requested. A condition precedent to the provision of any services pursuant to the subject authorizations is the achievement of appropriate operating agreements with foreign correspondents, and the submission to and approval thereof by the Commission (Order, at Paras. 13, 28 and 41). For this reason, i.e., that a quid pro quo to service provision in any event under the authorizations is approval by the Commission of agreements not yet obtained, and the fact that the Commission has not yet adopted procedures to permit public scrutiny of such agreements, if ever obtained, RCA Glōbcom believes under the circumstances that the issuance of a stay would be appropriate.

** Graphnet implemented its domestic data services in January, 1975 and Telenet followed in May, 1975.

Telenet applications, and it has not provided adequate bases or rationale for its abrupt departure from long-established Commission precedent, policies and practices pertaining to international service authorizations.

I. The Commission's Order is Predicated upon a Defective Rationale

The Commission appears, by its Order, to attempt to extend its domestic competition policy of open entry to the international market without independent findings to support such extension. No proceeding has been conducted to ascertain the effect of such policy extension upon existing U.S. international carriers or upon the public which relies on their services. Nor was any attempt made by the Commission to consider the views of foreign telecommunications entities with respect to the Commission's apparent intention to restructure unilaterally the international market for data communications.* In sum, significant legal and public interest criteria were neither considered nor applied by the Commission in granting the subject authorizations.

The Commission's domestic policies on new competitive entry were established in the Specialized Common Carrier* and Domestic Satellite** proceedings. In these, the Commission determined that the public interest, insofar as domestic service provision is concerned, would be furthered by the advent and maintenance of "full and fair competition" in the provision of non-monopoly services. Both these policy decisions followed lengthy public inquiry into the public interest ramifications associated with an extension of competition in domestic telecommunications markets. That inquiry included, among others, the size of the affected market, its ability to absorb additional entry and a need for innovation not met over a long period of time because of market domination by, essentially, a monopolist provider. As indicated above, no comparable inquiry has been conducted with regard to the international forum. Indeed, Commission commitments to conduct an overall review of the factors which apply to new entry into established markets are overlooked completely.*** Rather, the instant proceeding, in addition to others,* constitutes *de facto* implementation by the Commission of what appears to be an unqualified pro-competition policy derived on an *ad hoc* basis without adequate inquiry into and due consideration of the likely effects that such policy will have upon the public interest. It discloses conclusions arbitrarily reached by an agency on the basis of preconceived views and it effectively results in a denial of even rudimentary due process. We submit that the Commission's approach is fundamentally inconsistent with generally accepted statutory and judicial standards.** At a minimum, the Commission must be able to conclude both that new competition is "reasonably feasible" and that there are grounds for the "reasonable expectation that competition may have some beneficial effect". It must be able to support such conclusions with findings made on an appropriate record. Certainly, it is not enough to merely assert, as does the Commission, that "... we are not authorizing additional competition based on a belief that competition in and of itself is in the public interest". (Order, at para. 12)

---

* The Commission appears to attempt to accomplish through these authorizations and those promised in the future that which it failed to achieve in its decision in Docket 20097 (60 FCC 2d 261), i.e., opening to unlimited competition the international communications sector. In this regard, it is significant to note that the adverse reaction of various foreign correspondents was immediate and unqualified, thus forcing the Commission to retract its resale decision upon reconsideration. As was the case there, the Commission has made no attempt here to ascertain the attitudes and viewpoints of the entities to which the new entrants must turn to effectuate authorized services.

---

* Specialized Carriers Decision, 24 FCC 2d 318 (1970), 29 FCC 2d 870, reconsideration denied, 31 FCC 2d 1106 (1971).

** Establishment of Domestic Communications Satellites by Non-Governmental Entities, 35 FCC 2d 844, 38 FCC 2d 665 (1972).

*** See, e.g.: TAT-6 Decision, 35 FCC 2d 801, 823 (1972); and TRT Italy Reconsideration Order, 40 FCC 2d 1168, 1174-5 (1973).

---

* Such other Commission proceedings or actions include: *AT&T Overseas Dataphone Services*, FCC 76-10, January 19, 1976, permitting AT&T to use its existing intercontinental voice network to furnish switched data services to overseas points; TRT and French Cable authorizations permitting TRT to serve three new points in Europe on a direct basis without examination into the effect of these authorizations upon existing carriers, and permitting French Cable to provide telex service directly with the United Kingdom without inquiry into the competitive effects thereof; Mailgram authorizations to Hawaii permitting The Western Union Telegraph Company to re-enter the international record business in contravention of Section 222 of the Act; *Resale and Sharing Decision*, FCC 76-641, July 30, 1976, requiring that long-standing prohibitions pertaining to resale and shared use of services be removed from existing overseas carriers' tariffs; Marisat proceeding, requiring shore-end interconnection among the U.S. carriers providing Marisat Service; and Telex interconnection proceeding (Docket No. 21005) in which the Commission has proposed that the telex networks of international voice/record carriers be interconnected among themselves and with telex and TWX networks of Western Union.

** *FCC v. RCA Communications, Inc.*, 346 U.S. 86 (1955); *Hawaiian Telephone Co. v. FCC*, 498 F. 2d 771 (D.C. Cir. 1974).

While RCA Glōbcom, a long-time participant in the competitive international communications market,* certainly does not object to competition, it has strong reservations about being cast into a situation where it is restricted in its competitive efforts by Commission actions mistakenly undertaken in the belief that the interests of the public will be furthered. Under the circumstances, RCA Glōbcom believes that the instant Order, as well as Commission treatment of RCA Glōbcom in contrast to that accorded others, raises serious public interest questions as to whether even-handed regulation has been applied and will be forthcoming in the future.

As the Commission has recognized, regulation is a substitute, however inadequate, for the forces of competition operating in a free market place.** Theoretically, at least, the presence of effective competition removes or at least minimizes the need for regulation. Conversely, the absence of effective competition, as in the case where a natural monopoly exists, warrants detailed regulation.*** It is within this philosophical framework that RCA Glōbcom finds itself at a disadvantage vis-a-vis the newly authorized providers of overseas data communication services who, in fact, are subject to minimal Commission regulation, as well as the largest of carriers, the American Telephone & Telegraph Company (AT&T), which is not subject to the nature of Commission regulation imposed upon RCA Glōbcom.

---

* Such market, unlike its domestic counterpart, has always been characterized by vigorous competition among existing carriers.

** See, e.g., Computer Use of Communications Facilities, 28 FCC 2d 291, 297 (1970).

*** Stated another way: "Regulation of any company which has little competition is necessary ..." 1934 House Hearings, Communications Act, at 30.

As noted below, the dichotomy in the Commission's treatment of subject carriers must be addressed and rectified immediately if the public interest is to be served. We submit a first step in remedying this dichotomy of regulation would be for the Commission to reconsider the subject Order and set aside the authorizations granted to Graphnet and Telenet. Certainly, at the very least, such applications should be deferred pending completion of an appropriate proceeding designed, among other things, to address the feasibility of increased competition in the limited international market and the framework in which such competition may take place.

II. The Commission's Order fails to Address and Dispose of Substantial Public Interest Issues Raised by RCA Glōbcom

The Commission's Order fails to address several substantial issues raised by RCA Glōbcom with regard to the Graphnet and Telenet applications* and thus, sub silentio, it improperly rejects those issues and RCA Glōbcom argument in connection therewith. RCA Glōbcom submits that the Commission's failure to consider fully RCA Glōbcom's position constitutes legal error under the circumstances and serves to underscore the inquitable treatment accorded RCA Glōbcom vis-a-vis other entities with whom it is expected to compete. It is incumbent upon the Commission to address, analyze and dispose of relevant public interest issues timely raised, not to ignore them as though they were non-existent.

The Commission's abrupt and unexplained departure from precedent and practice respecting the need to obtain operating agreements with foreign administrations as a condition precedent to grants of authorization is in itself sufficient to remove any rational basis for its public interest finding. A key element in any public interest finding concerns the contract between a U.S. carrier and a foreign entity addressing the terms and conditions of service and the division of tolls. Absent this information, the Commission cannot reasonably make the statutorily required public interest finding.* Furthermore, the Commission's novel licensing approach will present substantial problems which the Commission fails to consider. These will result in the equipping of would-be U.S. international carriers with "hunting licenses" to venture world-wide "to find a partner" with which to do business; the bringing of pressures on foreign administrations to transact business with an unknown number of new U.S. Commission "licensees"; and a likelihood that such foreign administrations will be placed in the position of being able to negotiate the "best deal" from among several U.S. "bidders". Thereafter, other U.S. carriers with whom the administrations work could be "whipsawed" into settlement and operating arrangements most favorable to the overseas entity.* Clearly, these considerations merit further Commission attention in the public interest.

---

* Nowhere does the Commission in its Order address matters related to the distinction between Graphnet and Telenet, as communications "resellers", and RCA Glōbcom as an "underlying carrier", and the public interest ramifications thereof in a competitive environment; the implementation of international telecommunications policy on an ad hoc basis and the public interest ramifications thereof; the relevance of long-standing judicial standards for the introduction of additional competition in a regulated market; the Commission's Authorized User Decision (4 FCC 2d 421 (1966); 6 FCC 2d 593 (1967)) and the applicability of that decision and its rationale to the situation at hand; the several competitive considerations below delineated which arise by virtue of the provision of both domestic and international services by Graphnet and Telenet through the same corporate entity; issues related to disparate regulatory treatment accorded Graphnet and Telenet, on the one hand, and RCA Glōbcom on the other; the legal qualifications of Telenet for additional license authorization in view of the facts surrounding its extension of service to Canada; the legal, technical and financial qualifications of Graphnet; and with respect to the novel treatment adopted for Commission public interest consideration of operating agreements entered into with foreign correspondents, the abrupt and unexplained departure from firmly rooted Commission precedent, policy and practice.

---

* See Commercial Cable Co. et al, 28 F.C.C. 285 (1960) wherein the Commission stated with respect to pending Section 214 applications of international carriers that authorizations properly would not be granted until the applicants had completed negotiations with their foreign correspondents and had advised the Commission of the terms and conditions under which the facilities would be operated. With regard to one of the applicants, the Commission stated:

> "...Such application lacks data with respect to such matters as concurrence of the foreign correspondent, which owns and controls the other half of the cable circuit in the proposed operations, the terms and conditions of the proposed service, and the division of tolls between the carriers. These data are essential and must be before us before we can reach the necessary conclusions as to whether the public convenience and necessity require provision of the service. This is particularly true in a competitive situation, because unless we know exactly what terms have been offered the foreign correspondent, and whether such terms are more favorable than those offered by competing U.S. carriers, we cannot make the necessary determinations either with respect to the economic feasibility of the service or with respect to the overall public interest of a grant." (At 290)

The Commission has failed to properly take into account the impact that the subject authorizations, as well as those foreseen in the future, will have upon the viability of existing U.S. overseas carriers, and their ability to furnish all of their public services.** As we noted above,*** it is incumbent upon the Commission, as a matter of law, to assess, as indeed it must, such impact prior to new overseas authorizations. In connection with this assessment, we submit that the international data communications market is substantially more limited than is, for instance, the domestic market and, accordingly, it is far more vulnerable to the adverse effects of market fragmentation. This is especially true where the dimensions of the international market really are not known at this time, even though it is estimated that such market is growing and will prove to be substantial"in the future".

---

* See In Re TRT U.K. Telex Rate Reductions (Transmittal No. 698), released February 4, 1976, wherein the Chief, Common Carrier Bureau, stated:

> "Foreign correspondents can utilize their monopoly status to play one [U.S.] carrier against the other [U.S.] carriers, and thus possibly gain significant concessions and benefits from the U.S. international carriers to the detriment of the American ratepayer". (at para. 9)

** See, in this regard, the Commission's concerns and assessments made with respect to the impact upon international voice-record carriers if AT&T were authorized to provide alternate voice-data services. TAT-4 Decision, 37 FCC 1151 (1964).

*** See first footnote, at 4, supra.

Moreover, we had indicated that both Graphnet and Telenet, as "resellers" of communications services, have no investment interest in communications facilities. On the other hand, the existing carriers have substantial investments in facilities, which investments require a rate of return level sufficient to permit the continued furnishing of present and future services. While this situation provides resellers with a certain flexibility in their operations (albeit one in which long-term commitment to public service provision is not required), the existing carriers are constrained to be concerned with recovering their substantial investments in facilities. This is a critical factor in a competitive environment, as will be further emphasized below when we discuss what we consider disparate Commission treatment of Graphnet and Telenet on the one hand, and RCA Globcom on the other.

This matter further is exacerbated by the fact that the subject authorizations purport to permit Graphnet and Telenet, as "authorized users", to obtain facilities for service provision directly from the Communications Satellite Corporation (Comsat). This was accomplished by the Commission in its Order without any reference whatsoever to the standards set forth in the Authorized User Decision, 4 FCC 2d 421 (1966), 6 FCC 2d 593 (1967), nor, obviously, to the manner in which the applicants and their proposed services relate to such standards. Accordingly, the authorizations, if implemented, would permit Graphnet and Telenet to bypass existing carriers to satisfy their circuit requirements.*

Finally, we urge that the Commission re-examine its conclusory finding, made without any apparent analysis, support or justification, that Graphnet and Telenet are "legally, technically and otherwise qualified to offer their proposed services". (Order, at 6.) With respect to the Graphnet application, we raised questions concerning its qualifications in all three of these areas, and with respect to the Telenet application, we raised a question concerning its legal qualification. None of these have been addressed by the Commission in its Order. Insofar as we are aware, Telenet is not operating its domestic network on a profitable basis; that is to say, although it has provided services domestically for nearly two years, it has not yet reached a point where its revenues exceed its costs. Graphnet's common carrier operations, we suspect, are at best marginal in this respect. We seriously question, therefore, whether in view of these financial considerations, these entities ought to be licensed to expand considerably their services beyond the United States. At the very least, we submit that the Commission must support its conclusion with respect to their qualification to hold additional licenses because arrangements or relationships with foreign administrations will be involved.*

---

* In connection with the use of Comsat by Graphnet and Telenet for overseas transmission service, we note that the Commission completely failed to address in its Order facility diversity and redundancy policies and requirements otherwise applicable to international carriers using both satellite and cable circuits. The question thus arises whether such policies and requirements will be abandoned by the Commission with respect to resellers it may license in the future to provide overseas data services.

III. The Commission's Order Fails to Provide a Reasoned Analysis of the Competitive Consequences of its Graphnet and Telenet Authorizations

As indicated above, RCA Glōbcom believes that the Commission has failed to assess adequately and appropriately the impact that the subject authorizations will have upon the existing international market place and the carriers providing service therein. The Commission's attempt in its Order to address the competition issues raised by RCA Glōbcom simply misses the point as to the "competitive advantage" that Graphnet and Telenet will have under the subject license grants. Essentially, the Commission concludes that Graphnet and Telenet may furnish domestic and international service under the same roof because (1) each is "small" and thus would have no significant revenue base in one market by which it might obtain an advantage in the other, and (2) there is no threat of cross-subsidy as there was in the situation which necessitated that RCA Glōbcom divest its domestic satellite operations as a precondition to a grant of Commission authorization for satellite launchings.**

---

* This situation is markedly different than that involving Datran, a domestic carrier forced to terminate its operations, as Datran's abrupt departure from the market presented no direct international consequences.

** RCA Global Communications, Inc., 56 FCC 2d 660 (1975). The Commission essentially states in its Order that it required RCA Glōbcom to divest its domestic satellite operation because it feared cross-subsidy of the domestic operation at the expense of international ratepayers. Apart from the question as to whether cross-subsidy is ever a legitimate concern where non-monopoly services are involved, the question must be raised as to why AT&T has never been obliged to separate out its international from its domestic operations, both along monopoly and competitive service lines.

Further, the Commission concludes that Section 222 of the Communications Act and the "gateway" concept contained therein do not unduly restrict RCA Glōbcom's ability to compete. It is noted that these issues will be considered within the context of the long-pending Docket No. 19660* and that, in any event, it is not a Commission but a legislative problem not of the Commission's direct concern. RCA Glōbcom is "free" , says the Commission, to interconnect with non-affiliated domestic carriers to furnish overseas data service. Such "freedom", it is stated, permits RCA Glōbcom to be sufficiently flexible and highly competitive. Finally, it is concluded that "inherent advantages" result from RCA Glōbcom's "established standing in the international field". The Commission's assertions concerning what it believes to be the competitive advantages enjoyed by RCA Glōbcom are demonstrably mistaken. Moreover, its direction that RCA Glōbcom seek redress in Congress to the extent that dissatisfaction with existing Section 222 of the Act and the Commission's interpretation thereof arises is disingenuous,to say the least.** The competitive preferences accruing to Graphnet and Telenet are of the Commission's doing, not Congress's.

---

* It is significant to note that since the Commission's preliminary finding in Docket No. 19660 to the effect that some new gateways should be authorized to international voice-record carriers, made in July, 1975 (54 FCC 2d 532), no further proceedings have been conducted in this Docket and none are presently scheduled. Therefore, relegating this matter to a Docket that is not actually being prosecuted by the Commission effectively amounts to denial of the pending requests by international voice-record carriers for additional gateways. This is of substantial importance, especially when viewed in the realities of the new market envisioned by the Commission wherein some competitors are subject to gateway restrictions and others are not.

** So is the Commission's commitment in its Order "to expedite" its proceedings in Docket No. 19660, disingenuous, since RCA Glōbcom's application to extend its gateway cities is now over five years old.

The level of flexibility to be found in an interconnect situation clearly is diminished by the presence of an entity which RCA Glōbcom cannot "control" other than by negotiated interconnect contract provisions.* More significantly, from a marketing standpoint, U.S. users with both domestic *and* international communications needs can turn to either Graphnet or Telenet *as a single source supplier*, rather than to a domestic data carrier and to RCA Glōbcom, either separately or via interconnection, to satisfy their data communications needs. Further, Graphnet and Telenet effectively have been granted by the Commission in the instant authorizations gateways in *each* one of the many U.S. cities in which they conduct domestic operations. Apart from the fact that this likely will have a direct and substantial effect upon the market feasibility issue, a public interest element not considered herein by the Commission, it represents a considerable competitive advantage, the effect of which cannot be overemphasized. Individually and collectively, these unlimited Graphnet and Telenet gateways amount to an undeserved marketing advantage that the existing international carriers do not enjoy.

The overseas authorizations of Graphnet and Telenet implicitly contain a more fundamental issue which must be addressed at this time. Graphnet and Telenet are *not* subject to rate base regulation, as is RCA Glōbcom. It is *not* believed that they (and other present and future specialized carriers) will ever be regulated to the same degree as the traditional or underlying carriers, including RCA Globcom, in the sense that rate of return levels and other elements of operation will be subject to Commission scrutiny. There appear to be two basic reasons for this: (1) there simply are too many carriers for the FCC to regulate in such detail; and (2) theoretically, at least, the presence of effective competition removes or at least minimizes the need for detailed rate regulation. Accordingly, as RCA Globcom furnishes no monopoly data services and as the authorizations granted to Graphnet and Telenet will affect directly or indirectly RCA Globcom data and record services, the issue of "full and fair competition" arises within this context of disparate FCC treatment of competing entities subject to its regulatory authority.*

---

* Moreover, it appears that the Commission invites the existing international carriers to join with unaffiliated specialized data carriers, including Graphnet and Telenet, to jointly provide data service to overseas points, a partnership arrangement, in effect, which on its face is inconsistent with authorizations to such carriers to provide the service directly to overseas points in competition with existing international carriers.

As we stated in our "Reply" with respect to the Telenet application:

> "In several respects, Telenet urges upon the Commission a policy of uneven-handed treatment of carriers subject to its jurisdiction. It would appear that the most stringent Commission regulation should be imposed, according to Telenet, upon the American Telephone and Telegraph Company, essentially a monopoly carrier. Next, it appears the rigors of regulation should address what Telenet describes as the "already entrenched oligopoly in the international communications field, where, allegedly, undue rates of return are being earned. Finally, minimal regulation should be accorded Telenet, it is argued, and other resale carriers in the first instance to permit them to determine the ratemaking approach that best suits them. In other words, all carriers are to be regulated, but some

---

* While we cannot agree that Commission policy of open entry in the domestic arena can be applied to the international forum absent an appropriate hearing and public interest findings, we ascribe in principle to the Commission's commitment to "provide and maintain and environment within which existing and any new carriers shall have an opportunity *to compete fairly and fully* in the sale of specialized services." *Specialized Carriers Decision*, 29 FCC 2d 870, at 915. [Emphasis supplied] Such commitment apparently does not and will not pertain to international communications carriage.

> carriers must be more regulated than others. We believe this "handicapping" approach to regulation is contrary to the often stated Commission determination that, where competition is introduced, existing carriers will be afforded an opportunity to compete fairly and fully without artificial constraint.
>
> We firmly believe that any introduction of additional competition into the international marketplace, as the Commission apparently is predisposed to permit [citing Resale and Shared Use Decision, FCC 76-641, released July 16, 1976], should be accompanied by the relaxation of regulation over existing competitors so as not to inhibit the benefits that are intended to flow from further competition. We would find it particularly abhorrent if we were subjected to continued rate of return regulation while those with whom we effectively were obliged to compete escaped such rigors. Thus, we believe that government rate regulation, normally felt required in the absence of competition, should be adjusted appropriately in the presence thereof." RCA Glōbcom "Reply Comments", File No. I-T-C 2634, dated August 27, 1976. Footnotes omitted, unless otherwise indicated.

We believe that the Commission action authorizing Graphnet and Telenet to furnish international services fully warrants a re-examination of the criteria and limitations that apply to the existing international carriers if, indeed, it is the Commission's objective to promote real competition rather than to attempt to allocate markets among existing and future carriers.

IV. Conclusion

In view of all of the foregoing, RCA Glōbcom respectfully requests that the Commission set aside its grants of authorization to Graphnet and Telenet. At a minimum, implementation of such authorizations should be deferred pending the conduct of an appropriate inquiry into the impact that such authorizations, and others, will have upon existing carriers and carrier services in the international market. In so doing, RCA Glōbcom urges that the Commission provide full opportunity to RCA Glōbcom to formulate and present to the Commission its position in such matter, and that the Commission consider such RCA Glōbcom position in its deliberations. Finally, in disposing of matters relating to such RCA Glōbcom position, it is requested that the Commission fully set forth the bases for any findings and conclusions it may make in connection therewith.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

F.J. DeRosa

D.J. Elardo

Its Attorneys
60 Broad Street
New York, New York 10004

Tel. (212) 363-2303

Dated: February 10, 1977

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of	
GRAPHNET SYSTEMS, INCORPORATED	File Nos. I-P-C-11 I-P-C-11A
For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany.	
TELENET COMMUNICATIONS CORPORATION	File No. I-T-C-2634
For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	
RCA GLOBAL COMMUNICATIONS, INC.	File No. I-T-C-2657
For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	
WESTERN UNION INTERNATIONAL, INC.	File No. I-T-C-2658
For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	

To the Commission:

REQUEST FOR PARTIAL STAY

RCA Global Communications, Inc. (RCA Globcom) hereby requests that the Commission grants of authorization made to Graphnet Systems, Inc. (Graphnet) and Telenet Communications Corporation (Telenet) in a Memorandum

Opinion, Order, Authorization and Certificate, FCC-77-2, dated January 11, 1977, hereinafter "Order", be stayed pending and subject to (1) the initiation and conclusion of an inquiry by the Commission into the effect that these authorizations and others, if implemented, will have upon existing U.S. competitors, their service offerings within the international market place, and charges required to be paid by the public; (2) the conclusion of further Commission and court proceedings in which the grants of the subject authorizations are being challenged;* and (3) ultimate approval by the Commission (after consideration of comments to be filed by interested parties pursuant to appropriate notice procedures to be implemented by the Commission) of operating agreements these carriers may reach with overseas telecommunications administrations. Such stay should remain in effect until all of the foregoing events take place.

In support whereof, the following is demonstrated:

On February 10, 1977, RCA Glōbcom submitted a "Request for Partial Reconsideration" of the aforementioned Order, which pleading is incorporated by reference herein.** Therein, RCA Glōbcom indicated generally, inter alia, that the Commission failed to address and dispose of a number of questions timely raised by RCA Glōbcom with respect to the subject applications; that the Commission failed to address properly and assess the competitive consequences and public interest factors associated with these authorizations and other recent Commission actions; and that the Commission is engaging in a course of regulatory conduct which effectively varies the nature and degree of regulatory treatment accorded competing carriers subject to Commission jurisdiction. RCA Glōbcom requested therein that the Commission reconsider its grants of authorization to Graphnet and Telenet and, under the circumstances, set these aside pending the conduct of an appropriate inquiry into the impact that such authorizations and others will have upon existing carriers and their services in the international market.

---

* On January 25, 1977, ITT World Communications, Inc. appealed the Commission's grant of the subject authorizations to the Second Circuit Court of Appeals. ITT World Communications v. FCC, Appeal docketed No. 77-4028, 2nd Cir., January 25, 1977.

** Pursuant to Section 1.106(j) of the Commission's Rules, such Request must be acted upon by the Commission no later than May 11, 1977.

RCA Glōbcom submits that the appropriate criteria applicable to a grant of stay are satisfied in the present circumstances.*

RCA Glōbcom Likely Would Prevail on the Merits of an Appeal

There are several respects in which the subject Order is vulnerable to judicial reversal or remand on appeal. Individually and collectively, these indicate a clear likelihood of probable success on the merits of any appeal that might be taken.

In deciding to authorize Graphnet and Telenet to enter the international market directly, the Commission conducted no proceeding pursuant to the provisions of Section 214 of the Communications Act of 1934, as amended, or raised issues substantively encompassed by Section 214, to determine whether on balance the public interest would be served by such authorization grants. Thus, no evidence was adduced as to (1) whether the carriers proposed to be licensed are qualified technically, legally and financially to hold international licenses and (2) whether the present and future international market is capable of supporting new market entrants without undue impairment of existing international carriers in the provision of their public services. Furthermore, these questions of fact clearly were joined in issue in the various pleadings and, therefore, require examination and resolution within the context of an evidentiary hearing.

---

* See Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). These criteria include:

1. A strong showing that petitioner is likely to prevail on the merits of an appeal;
2. A showing that, absent the issuance of a stay, petitioner will be irreparably injured;
3. A showing that issuance of a stay will not substantially harm other interested parties, and
4. A showing that the public interest lay in the issuance of a stay.

See also In Re Western Union SICOM Service, 59 F.C.C. 2d 1253 (1976); Communications Satellite Corp., 57 F.C.C. 2d 571 (1976).

Apart from the fact that the Commission failed to conduct an evidentiary hearing to derive evidence on the basis of which public interest findings could be made, it failed in its Order even to address several questions raised by RCA Globcom with respect to Graphnet and Telenet authorizations. Thus, the Commission's action under the circumstances is arbitrary and capricious and represents an abuse of discretion in violation of the Administrative Procedure Act (APA), 5 U.S.C. §706 (1970).

Further, the Commission's determination to grant licenses to Graphnet and Telenet in the absence of appropriate operating agreements with the foreign telecommunications administrations covered by the license applications represents a radical departure from sound and long-established Commission policy without adequate notice or reasons therefor. Traditionally, such agreements have been a primary element in permitting the Commission to make the requisite public interest findings with regard to issuing new international licenses, and the Commission has so held.* Except for a conclusory assertion that such policy will not apply in the instant situation, the Commission offers no basis or reasoned explanation, as required by law**, to support its abrupt change in policy and practice. Thus, its novel approach to international licensing does not rest upon grounds which are "clearly disclosed and adequately sustained."***

In particular, the Commission fails to consider and address the practical effect that its action will have upon U.S. international carriers in their dealings with foreign telecommunications administrations with whom such U.S. carriers are and will be obliged to negotiate and transact.**** Both law and common sense dictate that the Commission ought to have applied its expertise to assess prospectively the implications of its action. It failed to do so.

Finally, the subject Commission authorizations, which permit the provision of Graphnet and Telenet international service from all those U.S. cities in which these carriers operate, or will operate, constitute an unreasoned abandonment of the Commission's "gateway" policy effected under Section 222 of the Communications Act. Because RCA Glōbcom and others are subject to such policy and remain restricted to providing their competitive international services from within five U.S. cities, the subject Commission action bestows an unreasonable discriminatory preference upon Graphnet and Telenet, one for which no logic or justification exists.* Such preference without evidence to support the need therefor or reasonableness thereof gives to Graphnet and Telenet an unwarranted and unlawful competitive advantage in that each of these carriers are permitted to satisfy both the domestic and international service needs of U.S. customers from any U.S. location in which they operate. RCA Glōbcom and others do not have this capability as they have been barred to date, as a matter of Commission policy, from furnishing both domestic data communications services and their authorized international data communications services from points beyond the five U.S. gateway cities. Under the circumstances, the Commission's action is arbitrary, capricious and an abuse of discretion in violation of the Administrative Procedure Act and decisions thereunder.

---

* See Commercial Cable Co., et al., 28 F.C.C. 2d 285 (1960).

** See Columbia Broadcasting System, Inc. v. FCC, 147 U.S. App. D.C. 175, 454 F.2d 1018, 1026 (1971).

*** SEC v. Chenery Corp., 318 U.S. 80, 94 (1943). It is axiomatic that administrative decisions must be supported by adequate findings, as well as reasons behind those findings. 5 U.S.C. §557 (1970).

**** See RCA Glōbcom "Petition for Partial Reconsideration", at 8-10.

For all of the foregoing reasons, RCA Glōbcom would likely prevail on the merits of an appeal.

---

* The Commission's attempt to justify this discrimination by asserting, inter alia, that Graphnet and Telenet are comparatively "small", and that the existing international carriers will be able to compete effectively, ignores the competitive realities that will result from the Commission's action. In any event, the Commission's supportive rationale consists of conclusory assertions for which there are no bases.

Absent the Issuance of a Stay, RCA Glōbcom Will be Irreparably Injured

The market for international data communications, it generally is recognized, is growing at a rapid although uncertain pace. The U.S. segment of such market currently satisfies its data communications needs through services furnished by RCA Glōbcom and other existing U.S. international carriers. Domestic data communications needs, on the other hand, are satisfied by U.S. domestic carriers, including Graphnet and Telenet. Implementation of the subject authorization grants by Graphnet and Telenet, if permitted, will allow these to become single source suppliers to U.S. customers for both their domestic and their international data communications needs. This would constitute an unwarranted Graphnet and Telenet advantage in the market place that will redound to the competitive detriment of RCA Glōbcom in terms of its standing and capabilities in the eye of U.S. data communications users.

Moreover, there is a tendency among overseas telecommunications administrations--for the most part government-sanctioned monopolies--to enter operating agreements with only a single or, at best, a limited number of U.S. carriers for the provision of data services. To the extent Graphnet and Telenet might be able to obtain an operating agreement or agreements with certain of these administrations by virtue of the subject F.C.C. license grants, RCA Glōbcom effectively may be "frozen out" from negotiating and implementing agreements with those administrations. In view of the foregoing facts and considerations demonstrating the unlawfulness of the Graphnet and

Telenet authorizations, RCA Glōbcom would be irreparably injured if it were foreclosed from achieving a service arrangement with an overseas administration because of the latter's agreement with Graphnet or Telenet, which agreement never could be implemented because of an eventual finding that the Graphnet and Telenet authorizations were improperly made.

Accordingly, pending action by the Commission on RCA Glōbcom's reconsideration request and, if necessary, the conclusion of judicial proceedings, the status quo should be preserved through the issuance of the requested stay.

Issuance of a Stay Will Not Substantially Harm Other Interested Parties

The issuance of a stay will not substantially harm other parties. Neither Graphnet, Telenet nor, more importantly, the data communications using public, stand to be adversely affected by the issuance of a stay, as neither of the "new" international carriers have a present capability to furnish direct international service. Neither has an operating agreement or agreements with foreign telecommunications administrations, approval of which, if obtained, is a condition precedent to the actual provision of the contemplated services.* Thus, no public user stands to be deprived of an existing service, nor will issuance of a stay in and of itself cause withholding of such services from users. Simply stated, neither Graphnet nor Telenet is in a position to provide the services which the Commission has authorized them to furnish. Under the circumstances, the issuance of a stay, pending disposition of RCA Globcom's Reconsideration request and the completion of judicial review, if necessary, will not substantially harm any interested party.

---

* Order, at paras. 13, 28 and 41.

Moreover, and perhaps most compelling from a practical standpoint, both Graphnet and Telenet have entered interconnection agreements with international carriers, the effect of which will be to extend their respective services to various overseas countries, including those nations which they have been authorized by the Commission to serve independently. Such interconnection arrangements were foreseen and, indeed, encouraged by the Commission in its Order as a means for existing international carriers to overcome, in part, gateway policy restrictions, as well as other inherent competitive disadvantages, applicable to them.* Thus, issuance of a stay herein will not at all foreclose Graphnet or Telenet service extensi to overseas points, nor will it deprive U.S. users of such services on an international basis.

The Public Interest Lies in the Issuance of a Stay

The subject authorizations represent entry into the limited international communications market of two additional carriers -- the first such new entrants in approximately forty years. This development should have been preceded by the most thorough of inquiries (through an evidentiary hearing) into all the short- and long-term public interest ramifications of such entry, including the probable effect upon the ability of existing international carriers to furnish their public services. No inquiry was held; rather, merely on pleadings and, apparently, a blind faith in the precept of competition, the Commission has purported to reach those public interest findings required to support its authorizations.* An examination of the Commission's Order will reveal, as indicated by the foregoing and in RCA Globcom's "Petition for Partial Reconsideration", that the Commission has failed either to approach properly or to address the substantial issues inherent in the instant matter. In view of these deficiencies, the public interest requires that a stay be issued pending completion of Commission reconsideration and, if necessary, judicial review proceedings. If, indeed, the public interest lies in a reasoned Commission decision incapable of being reversed or remanded upon appeal, then the need for a stay is even more apparent in this matter.

---

* Order, at para. 14.

The issuance of a stay merely means that the status quo will be maintained pending further Commission and Court action. As indicated above, no user will be deprived of the subject services, and these services will not be withheld from the public by virtue of the existence of a stay alone under the circumstances. The international carriers themselves stand ready to provide service via their own facilities where feasible, and Graphnet and Telenet services likely will be extended to overseas locations through interconnection arrangements with existing international carriers.

Continued operation of viable carriers in the international market is of paramount importance to the public user. Any market fragmentation through the authorization of new carriers in the manner accomplished herein by the Commission and, indeed, any unreasonable action adopted by the Commission, including according competitive preferences to the proposed new entrants, simply is not in the public interest.

---

* See FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Hawaiian Telephone Co. v. FCC, 498 F.2d 771 (D.C. Cir. 1974).

Conclusion

For the foregoing reasons, as well as those set forth in RCA Glōbcom's Petition for Partial Reconsideration, all the criteria applicable to the issuance of a stay are satisfied. Accordingly, a stay should be fashioned by the Commission along the lines recommended herein.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

By FJ DeR
F.J. DeRosa

By DJ Elardo
D.J. Elardo

Its Attorneys
60 Broad Street
New York, New York 10004

Tel. (212) 363-2303

Dated: March 11, 1977

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20006

In Re Applications of	
GRAPHNET SYSTEMS, INCORPORATED	File Nos. I-P-C-11 I-P-C-11A
For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.	
TELENET COMMUNICATIONS CORPORATION	File No. I-T-C-2634
For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	
RCA GLOBAL COMMUNICATIONS, INC.	File No. I-T-C-2657
For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	
WESTERN UNION INTERNATIONAL, INC.	File No. I-T-C-2658
For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	

To the Commission:

TRT TELECOMMUNICATIONS CORPORATION
COMMENTS ON PETITION FOR PARTIAL RECONSIDERATION

TRT Telecommunications Corporation (TRT) hereby submits its comments with respect to the petition filed by RCA Global Communications, Inc. (RCA) on February 10, 1977, requesting the Commission to reconsider its above-captioned Memorandum Opinion Order, Authorization and Certificate, FCC-77-2, released January 11, 1977, (Order) to the extent that Graphent Systems, Inc. (Graphnet) and Telenet Communications Corporation (Telenet) were authorized to furnish international data telecommunications directly to overseas points. In this regard, TRT respectfully states as follows:

TRT agrees with RCA that the Commission in its Order failed to come to grips with the basic policy issues presented by Graphnet and Telenet applications. Indeed, we respectfully submit no more than cursory consideration of the relevant issues was permitted in light of the precipitous action of the Commission in granting the prematurely filed Graphnet and Telenet applications without hearing and before there was even any assurance that Graphnet and Telenet could obtain operating agreements from foreign administrations needed to establish their proposed services.

The great preponderous of the Commission Order is devoted to a discussion of the future need for additional overseas data transmission services. However, we submit that the fundamental issue before the Commission is not whether there is a need for additional overseas data transmission services; rather, the very fundamental policy issue presented by the Graphnet and Telenet applications is whether these new data services should be provided, consistent with previously enunciated Commission policies and the existing industry structure, as interconnected services from authorized gateways by international carriers or whether the new international data services should be provided as through services by domestic carriers.*/

---

*/ In this regard, we disagree with RCA to the extent that in a footnote to page 4 of its petition, it appears to equate the Commission's instant authorization of Graphnet and Telenet with prior actions of the Commission in granting authority to existing international carriers to provide direct circuit operations to new overseas points. The Commission in its initial Order did not merely authorize an existing IRC to utilize improved direct circuit routing to provide services that it had previously been authorized to provide via transmitting administrations. The Commission in its instant Order, moreover, did not just authorize two new entrants into the international record communications field which would be subject to the same operating and regulatory constraints as its competitors. Rather, it authorized two domestic carriers to provide record service directly to overseas points in sharp departure from fundamental and long established policies.

In furtherance of the Congressional policy inherent in Section 222 of the Communications Act, the Commission over the past thirty-four years has fostered a policy of separation of international and domestic record communications under which international record carriers are restricted to the provision of their services to public from authorized gateway cities and domestic carriers are permitted to provide international record communications only through interconnection at the gateway cities with the international record carrier services. In its instant Order, the Commission gives only passing reference to this fundamental policy governing the provision of record communications for the past thirty-four years, and departs from that policy without any investigation as to purposes of the policy of separation of international and domestic record communications, why that policy should not be applicable in the case of new data services, or whether fair competition between the through services of the domestic carriers and the interconnected gateway services of the international carriers is feasible.

We respectfully submit that such fundamental issues may not be disposed of in the summary manner adopted by the Commission herein. In Marine Space Enclosures, Inc. v. Federal Maritime Com'n., 420 F.2d 577, 584-87 (D.C.Cir. 1969), the court dealt with a similar attempt by an agency to use summary procedures to effect a sweeping change in its prior policy and practice. Reversing the agency and directing it to hold evidentiary hearings, the court held:

> "It is, to say the least, surprising that the Commission would depart from its own prior decisions . . . without discussing what points might further require an evidentiary hearing. It is surprising to the point of concern that the Commission would make such a departure in an opinion that offers the sparest of findings and speaks in the most conclusory terms."

> "An agency may modify or even reverse its past policies and announcements, but the confidence of a reviewing court that these adjustments are made in accordance with the requirements of law is not enhanced when the prior precedents are not discussed, the swerves and reversals are not identified, and the entire matter is brushed off once over lightly." (Id. at 585).

So it is that most courts have realized that evidentiary hearings are necessary to resolve issues of great substantive importance. See also Citizens for Allegan County, Inc. v. FPC, 414 F.2d 1125, 1128-29 (D.C.Cir. 1969); Appalacian Power Co. v. EPA, 477 F.2d 495, 500-03 (4th Cir. 1973). See American Airlines v. CAB, 359 F.2d 624, 631 (D.C.Cir.), cert. denied, 385 U.S. 843 (1966).

Patently then, in the light of the significance of the issues raised by the Graphnet and Telenet applications, the drastic departure from prior settled Commission policy and precedent as well as statutory interpretation implicit therein, we submit that the Commission, prior to acting on these applications, was obligated to provide the parties with an opportunity for the most searching hearing procedures to scrutinize the full implications of the policy change sought by Graphnet and Telenet. Such further proceedings should include considerations of the following issues, among others:

1. Are the policy considerations which mandated a separation of domestic and international record services applicable in the case of data transmission services?
2. Should and could domestic data carriers, which also provide international data services, be expected to provide domestic services and facilities to international carriers for their international data services upon rates, terms and conditions which are no less favorable than those which are applicable in cases of their own competitive international services?

3. What interconnection arrangements should be prescribed to assure that the international carriers have a fair opportunity to compete for the overseas data transmission requirements of subscribers to the domestic data carriers' networks?

4. What degree of regulatory surveillance by the Commission would be required to assure that domestic data carriers did not discriminate against the gateway services of the international carriers in favor of their own international data services, either directly or indirectly, through rates, division of tolls, facilities, responsiveness to service problems or otherwise?

5. And what interconnection arrangements, regulatory surveillance, etc., would be required to assure that the international data services provided by domestic data carriers are made available to subscribers of competing domestic data networks on an equitable basis?

WHEREFORE, TRT supports RCA's request that the Commission reconsider and set aside its grants of authorizations to Graphnet and Telenet pending such further proceedings and hearings as required to determine whether the Graphent and Telenet applications should be granted in the light of the basic Congressional and Commission policies fostering a separation of international and domestic record communication services.

Respectfully submitted,

TRT TELECOMMUNICATIONS CORPORATION

By: Roderick A. Mette
Roderick A. Mette
Vice President and Counsel

1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dated: March 14, 1977

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of	
GRAPHNET SYSTEMS, INCOPPORATED	File Nos. I-P-C-11 I-P-C-11A
For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.	
TELENET COMMUNICATIONS CORPORATION	File No. I-T-C-2634
For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	
RCA GLOBAL COMMUNICATIONS, INC.	File No. I-T-C-2657
For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	
WESTERN UNION INTERNATIONAL, INC.	File No. I-T-C-2658
For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	

To: The Commission

OPPOSITION TO "PETITION FOR PARTIAL RECONSIDERATION"

Telenet Communications Corporation (hereinafter "Telenet), by its attorneys, hereby opposes the "Petition for Partial Reconsideration" filed herein by RCA Global

Communications, Inc. ("RCA Globcom"), insofar as that petition seeks reconsideration and reversal of the Commission's Memorandum Opinion, Order, Authorization and Certificate released January 11, 1977 (Order) granting Telenet's application for authority to extend its packet-switched data communications service from the continental United States to the United Kingdom and points beyond.

I. Preliminary Statement

The Commission's January 11 Order disposed of four essentially unrelated applications for international authorization. Two of these applications -- those of Graphnet and Telenet -- had been on file for over eight months, whereas those of RCA and Western Union International ("WUI") (for "Datel II" and "Database Service", respectively) were not filed until the fall of 1976. Despite the obvious handicapping inherent in the Commission's consolidation of the four applications for decisional purposes, to the disadvantage of Graphnet and Telenet, RCA complains only of the Graphnet and Telenet grants, and prefaces its petition with the claim that "the authorizations grant to Graphnet and Telenet an unfair and unwarranted competitive advantage."

As will be detailed below, Telenet has not received any "competitive advantage", much less an "unfair and unwarranted" advantage. The very timing of the Commission's processing of Telenet's application has worked upon it a competitive disadvantage. Delay in acting on Telenet's application, coupled with haste in acting upon that of WUI, has created the impression abroad that the Commission was disinterested in encouraging innovative services internationally, except through the established international carriers.[1] It is difficult to view the RCA petition seriously, in light of the manner in which the Order of which it complains has perpetuated the cartelization of international communications. Nonetheless, Telenet will deal below with each of RCA's allegations, and will demonstrate the utter lack of merit therein.

II. RCA's "Substantial Public Interest Issues" Are Devoid of Merit

Commencing at page 7 of its Petition, RCA challenges the Commission's Order for an asserted failure to address "substantial public interest issues" raised by RCA in its petition directed to the Telenet application. While Telenet believes that the Commission's Order is fundamentally sound in this regard, it urges that the Commission take the opportunity presented by the RCA petition to make explicit that which was implicit in its Order, and to specifically deal with, and dispose of, each of RCA's asserted "public interest" issues. As we understand RCA's position, based on the enumeration at the Footnote on page 8 of its petition, these issues are as follows:

---

[1] At this point, Telenet has no formal operating agreement with the British Post Office, although it continues to believe that such an agreement for direct interconnection is feasible in the future.

(1) The Commission's failure to enforce its "precedent and practice respecting the need to obtain operating agreements with foreign administrations as a condition precedent to grants of authorization;"

(2) The "public interest ramifications" of the "distinction between Graphnet and Telenet, as communications 'resellers', and RCA Globcom as an 'underlying carrier'";

(3) The "public interest ramifications" of the Commission's "implementation of international telecommunications policy on an ad hoc basis";

(4) The "relevance of long-standing judicial standards for the introduction of additional competition in a regulated market";

(5) The applicability of the Commission's *Authorized User Decision*;

(6) Competitive considerations arising out of "the provision of both domestic and international services by Graphnet and Telenet through the same corporate entity";

(7) The "disparate regulatory treatment accorded Graphnet and Telenet, on the one hand, and RCA Globcom on the other";

(8) The "legal qualifications of Telenet . . . in view of the facts surrounding its extension of service to Canada".

These issues will be dealt with below, *seriatum*.

A. The "Operating Agreement" Red Herring.

The essence of RCA's argument is that in the past, the Commission has expressed the desirability of having before it an operating agreement between the international carrier and its foreign correspondent at the time it is considering the carrier's application for §214 authorization for a new circuit or service, whereas here, the Commission has departed from that practice, and conferred on Graphnet and Telenet a "hunting license" enabling them to --- what? The logic of RCA's position (and, to the extent that its position correctly reflects prior Commission practice, such practice) is utterly lacking. The "hunting license" analogy just doesn't wash, unless RCA is implicity contending that foreign administrations are an "endangered species", or that no hunting is allowed, with or without a license, on the private game preserve of the established international carriers. The suggestion that the Commission should not license hunters, but force them out into the field to hunt without a license, coming to the Commission for license only after they have shot their prize, seems a rather untenable alternative.

In fact, the RCA concern is that no new hunters be licensed - particularly if they possess superior weapons. Each of the carriers has been the recipient of numerous hunting licenses in the past. In fact, two may have been awarded in the very order of which RCA complains: RCA receiving one, and WUI, the other, since it is the Commission's practice and policy that once an established carrier is authorized, through §214 procedures, to provide a new service to a particular country, it may thereafter offer that service to any country in which the carrier has the necessary circuitry merely by filing a tariff, or tariff amendment, and without any further §214 certification of public necessity. The only exception to this policy and practice is where the initial §214 authorization has been explicitly restricted in geographical scope. This principle has recently been enunciated in the Commission's

Brief in ITT World Communications, Inc. v. FCC, USCA2d, Case No. 76-4049, et al, where the Commission states:

> "Ordinarily, a carrier which has facilities in place that are capable of providing new services may offer the new services merely by filing a tariff. 47 USC §203." (Brief for Respondents, page 8).

This practice not only operates to confer on the certificated carrier a license to hunt foreign administrations not identified in its §214 application, in order to expand the geographical scope of its newly-authorized service, but it also demonstrates the total lack of logic in the argument that the Commission must have an operating agreement in hand before it can act upon the initial §214 application. While, as noted in paragraph 13 of the Commission's Order, the "terms of such agreements are often useful in determining whether the proposal as a whole is in the public interest", the policy which permits the carrier to thereafter offer the service to other countries (presumably, pursuant to different operating agreements reached after the initial §214 certification) conclusively demonstrates that the existence of an operating agreement is not the sine qua non of a Commission finding that a particular service will meet the public convenience and necessity.

An illustration of this point is available as an outgrowth of the very Order of which RCA seeks reconsideration: The WUI grant of an experimental one-year §214 authorization for Database Service to the United Kingdom was predicated only on a letter agreement with the British Post Office, which obviously could not, and did not, purport to, speak for other foreign administrations. However, on March 3, 1977, by its Transmittal No. 1109, WUI amended its Tariff No. 11 to expand the Database Service offering to Belgium, France, Italy, and Spain. Not only has this expansion received no specific §214 examination; the tariff submission was unaccompanied by operating agreements with those countries, although the transmittal letter represented that "WUI has reached agreement with the administrations in Belgium, France, Italy, and Spain to provide this communications service . . ."[2]

B. The "Distinction" Between Telenet and RCA is Neither Apparent Nor of Public Interest Significance

RCA attempts to establish a significant regulatory distinction between "resale" carriers, such as Telenet and Graphnet, and "underlying" carriers, which it claims to be. It claims in this connection that Graphnet and Telenet "have no investment interest in communications facilities", whereas "the existing carriers have substantial investments in facilities, which investments require a rate of return level sufficient to permit the continued furnishing of present and future services." (Petition, page 11). This is a totally fallacious proposition on two counts: it ignores the "substantial investment" which Telenet has in computer switching and software, which are exclusively dedicated to communications purposes; and it ignores that RCA and the other "existing carriers" are themselves "resale carriers" as to their satellite-based services. While RCA can be expected to argue that its earth station investment removes it from the "resale" category, that investment is directly comparable to Telenet's investment in computers and software.

---

[2] The foregoing comments should not be taken as evidence of Telenet's opposition to the WUI expansion of its Database offering to additional countries through the device of the tariff filing in question. Telenet's fundamental views concerning the WUI Database Service were set forth in its December 27, 1976, Petition to Deny WUI's §214 application, and were partially met through the imposition of conditions on the WUI grant. The effectiveness of those conditions remains to be determined.

In this connection, it should also be noted that in Docket No. 20097 the Commission especially declined to make regulatory distinctions based on whether one was engaged in resale activities, the furnishing only of underlying transmission facilities, or (as is the case with most carriers) a combination of both.

C. The "Public Interest Ramifications" of the Implementation of International Communications Policy on an Ad Hoc Basis

RCA contends that the Commission's grant of the Graphnet and Telenet applications represents an ad hoc approach to the development of international telecommunications policy, seemingly urging that policy may only be developed in the context of broad inquiries, but never on an _ad hoc_ basis. However, RCA fails to identify the new policies which have resulted from the grant of the Telenet application, much less the "[illegible] interest ramifications" thereof. To the extent that [illegible] raised specific concerns with the application, or with the Commission's treatment thereof, such concerns are dealt with in the Commission's Order and elsewhere in this Opposition. In the absence of specifics, however, RCA's argument is meaningless.

It is axiomatic that the Commission has wide discretion to proceed either by general rule-making or by dealing with specific applications, and to tailor its procedures to the particular situation before it, consistent with the requirements of due process. Thus, Section 4(j) of the Communications Act grants to the Commission the authority to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." Consistent judicial application of this provision has afforded the Commission substantial latitude in how it proceeds to deal with a particular matter before it: See _FCC_ v. _Schreiber_, 381 U.S. 279 (1965); _Pikes Peak Broadcasting Co., Inc._ v. _F.C.C._, 422 F. 2d 671 (App. D.C. 1969).

D. Judicial Precedents Are Supportive of the Commission's Action

Underlying RCA's argument is its view that the Commission's Order represents an "attempt to extend its domestic competition policy of open entry to the international market without independent findings to support such extension." RCA contends that the Commission has ignored the effect of such a policy extension upon the existing international carriers and the public, and that the Commission has failed to consider the views of foreign telecommunications entities regarding its "apparent intention to restructure unilaterally the international market for data communications." RCA contends that the instant Order would achieve the unlimited resale and sharing of international services which the Commission initially decreed in Docket No. 20097, but retracted after "immediate and unqualified" opposition of various foreign correspondents.

Contrary to RCA's claim, the Commission has not decreed a policy of "open entry" into the field of international communications. Rather, the Commission's attitude can best be described as "open-minded": At paragraph 10 of its Order, the Commission stated that it would not "preclude . . . consideration of other applications which would meet the growing demand for data communications services, [but] we are not herein making a general finding that would require the grant of any application proposing a new service or new transmission technique." In paragraph 12, the Commission expressly rejected the suggestion that its action might be construed as authorizing competition merely for the sake of competition: "Rather, we believe that this procedure will afford an opportunity to the applicants [Graphnet and Telenet] to demonstrate the public advantages in the use of their respective technologies . . ."

Significantly, RCA has failed to recognize the obvious distinction between Telenet's application and the factual situations giving rise to the RCA and Hawaiian Telephone cases[3] upon which it relies. In each of those cases, the Commission had authorized new entrance by a carrier which proposed to do no more than offer a service identical in all respects to services then currently being provided in that market. Under such circumstances, since the newly-authorized entrant would not have provided the public with a new and different service, it was not unreasonable for the Commission to be required to demonstrate in what manner the additional competition would serve the public. By contrast, in the instant matter, Telenet's proposal represents a new type of service not available to the public from any source. Thus, while the introduction of a competing, but identical, service cannot be expected to have any significant stimulative impact upon the market, the introduction of new services, such as those which were involved here, can be expected to have a dramatically stimulative impact, creating data communications markets where none exist under current service offerings.

---

[3] FCC v. RCA Communications, Inc., 346 US 86 (1955); Hawaiian Telephone Co. v. FCC, 498 F2d 771 (D.C. Cir., 1974).

Moreover, a reading of the Hawaiian Telephone Opinion demonstrates that the Court's criticism was as much directed to the applicant's failure to address the "public necessity" issue as it was to the Commission's failure to identify the public benefits which were expected to flow from the grant of the RCA application. The Court noted that RCA (the applicant in that case) relied largely on claims that its "historical role" and "equity" justified a grant, thus leading the Commission to have "focused on equalizing the position of competitors." (498 F2d, at 774). The Court then proceeded to review and criticize the history of the Commission's treatment of the Hawaiian-Mainland market, from which the Court found it "all too embarassingly apparent that the Commission has been thinking about competition, not in terms primarily as to its benefit to the public, but specifically with the objective of equalizing competition among competitors." (Ibid, at 775-6).

It is thus ironic that RCA relies on Hawaiian Telephone in support of its argument that the Commission has erred in permitting the entrant of a new entity to provide a new service. The grant of the Telenet application was certainly not motivated by a Commission desire to equalize competition among competitors:

That objective was manifested, if at all, in the Commission's withholding action on Telenet's application, while an established carrier -- Western Union International, Inc. -- put together a superficially comparable offering, and then, in a rare burst of expedition, granting the WUI application less than two months after its filing, and only five working days after the filing of the last "Petition to Deny" the WUI application. Thus, if RCA is truly concerned that the Commission has violated the strictures of the Hawaiian Telephone case, it has sought reconsideration as to the wrong grant, and should have sought reconsideration as to the WUI application.

In any event, the Commission has met the requirements imposed by the Supreme Court in FCC v. RCA Communications, Inc., supra, and Hawaiian Telephone Co. v. FCC, supra. In paragraph 4 of its January 4 Order, the Commission observes that the applications before it, including that of Telenet, "are in response to a fast growing need for overseas data communications services which is not presently being met by existing carrier service offerings." The Commission proceeds in that paragraph to detail the rapid growth in the number of data and facsimile terminals, and the concomitant development and growth of private and common carrier data communications networks, both within the United States, and in foreign countries. In the following paragraph, the Commission summarizes the nature of the services currently offered by the International Record Carriers, and correctly observes that such services "do not have the inherent cability to provide data transmission services for a substantial number of potential users in a cost effective manner;" and "are not cost-efficient for many users with intermittent data communications requirements." While the Commission did not make specific rate comparisons, the rates for the existing services identified by the Commission are tariff rates which are subject to official notice. Thus, between the U.S. and the United Kingdom, Datel Service typically costs the user $240 per hour; International Telex, $153 per hour; and Overseas Dataphone Service, $108 per hour. Telenet, in its application, indicated that a typical interactive user of its proposed packet-switched service would incur charges approximating $10 per hour.

In paragraph 7, the Commission noted additional, non-cost reasons why the existing services offered by the International Record Carriers were inadequate to meet the needs of the data communications market, including the inefficiency of having to place a separate call each time a user desires to access a remote computer, and the inability of existing services to interface with, and render possible, communications between incompatible terminals or computers. In paragraph 8, the Commission proceeded to identify how each of the four applicants (including RCA, as to its "Datel-II" application) would "meet the essential communications requirements described above." While the Commission's identification of the service advantages which would flow from a grant of the Telenet application was rather summary, it was accurate, as far as it went. As discussed at length in Telenet's Application, at pages 34-40, specific, unique, characteristics of the Telenet proposal as they relate to the needs identified in the preceding paragraphs of the Commission's Order would include:

1. Cost: Direct communication costs . order of magnitude lower than with existing international services; and significant non-communications cost savings for the user.
2. Quality of Service: Extremely rapid establishment of connections; high transmission integrity (error control); continuity of service (system redundancy and reliability factors); status information for the user; and terminal handling facilities.
3. Flexibility: Transmission capacity (band width) available on demand; and usage-based pricing.
4. End-to-end Service: Avoids user concern with auxiliary communications equipment and with national transmission standards and practices.

From the vantage point of the actual prospective users of the service, these features translate into the following "ultimate" benefits (See Telenet Opposition, pages 37-41 for specific user quotations, in elaboration of these benefits):

1. The service will make it feasible for small and medium-size users to take advantage of overseas data communications.
2. The service will make it possible for computer service companies to offer access to their unique data bases and applications programs overseas.
3. The service will make it possible for a corporation to provide access to its central computer facilities from its overseas branch locations.
4. The service, provided on an end-to-end basis, will obviate the user's need to concern himself with the different standards and incompatibilities which are common across international boundaries.
5. The service, provided on an end-to-end basis, will obviate the user's need to incur the cost of maintaining equipment and operations personnel at an overseas location, simply to monitor and maintain communications multiplexing and/or concentration equipment.
6. The service will permit computer service companies to extend their services into different time zones, thereby enabling them to obtain customers for their computer equipment during those times of day when the computer equipment would otherwise be idle.

7. The service will make possible projects heretofore impractical due to unsuitable overseas communications facilities.

E. With a Grant of Its §214 Application, Telenet Qualifies as an "Authorized User"

RCA criticizes the Commission's failure to deal with the argument -- contained in RCA's Comments regarding Telenet's application -- that Telenet's proposal to lease overseas circuits directly from Comsat is inconsistent with the Commission's Authorized User Decision, 4 FCC2d 421 (1966), 6 FCC2d 593 (1967). That RCA finds it necessary to perpetuate this argument only demonstrates the bankruptcy of its over-all position.

In the face of Section 201 (c)(2) of the Communications Satellite Act of 1962, which requires that the Commission "insure that all present and future authorized carriers shall have non-discriminatory use of, and access to, the communications satellite system . . ."(emphasis added), it is difficult to believe that RCA's argument was seriously advanced. However, in view of its persistence, it is urged that the Commission expressly reject RCA's argument. In its original Comments RCA based this argument on its view that Telenet looked more like a "user" than a carrier. Since the grant of Section 214 authority to Telenet eliminates any basis for RCA's contention, it should be summarily denied.

F. The Commission has Adequately Considered the Question of Whether Telenet Should Be Required to Form a Separate Entity for the Provision of International Services

RCA's claim to being competitively disadvantaged by virtue of Telenet's being permitted to offer both domestic and international packet-switching services under a single corporate entity was fully dealt with in paragraphs 14-15 of the Commission's Order. There, the Commission correctly noted that RCA and the existing international carriers enjoyed a substantial advantage by virtue of being already established, and that it was unreasonable to expect that small carriers such as Telenet or Graphnet might be in a position to engage in cross-subsidization to the detriment of RCA or the other established carriers. However, the Commission imposed record-keeping and reporting requirements on both Graphnet and Telenet, in order to ensure the Commission's future ability to detect and act with respect to any future problems in this area. RCA can hardly expect more.

G. Telenet Enjoys No Significant Regulatory Advantages Vis-a-Vis RCA

RCA's claim (Petition, pages 6-7) that it

> "finds itself at a disadvantage vis-a-vis the newly-authorized providers of overseas data communications services who, in fact, are subject to minimal Commission regulation, as well as the largest of carriers, The American Telephone and Telegraph Company (AT&T), which is not subject to the nature of Commission regulation imposed upon RCA Globcom,"

is incredible, and simply defies logic. Telenet (and Graphnet) are as subject to the Communications Act as RCA: They are required to seek §214 certification with respect to each line they acquire, and with respect to each new type of service offering to be made; and they are permitted to offer service only pursuant to valid tariffs filed with the Commission. Although in Docket No. 20097, Telenet urged that the line-by-line certification process as to resale carriers was an inefficient and unnecessary and administrative requirement, the Commission specifically rejected that suggestion at ¶110 of its July 1, 1976 Report and Order (60 FCC2d 261, at 312). In that proceeding, RCA itself had urged that the Commission should require regular §214 authorization for discontinuance of service, and the Commission agreed, at ¶112 (Ibid, at 313). On the question of rate regulation, the Commission considered and rejected a suggestion that resale entities be allowed to set rates at the prevailing market price, or that it otherwise adopt "simplified" or "relaxed" tariff filing requirements for resale entities. Rather, it held that "all carriers will be subject to the Commission's substantive rules for rate filings, including the provisions of §61.38." (Ibid, at 314).[4]

---

[4] If RCA were really concerned about competition from a minimally-regulated entity, one would have expected it to have long ago taken some action to discontinue its service to Tymshare, Inc., which has been utilized for "joint use" in violation of RCA's own tariff: See its letter of February 6, 1976, to Adrien R. Auger, Chief of the Complaints and Service Standards Branch of the Common Carrier Bureau (Attachment A hereto), in which RCA stated an "intent to pursue this matter [concerning Telenet's allegation that Tymshare was engaged in an unlawful unregulated resale of communications services internationally] with both our customer and our overseas correspondent." To our understanding, Tymshare continues to lease the RCA circuit in question.

RCA's reference, in the quotation set forth above, to AT&T and to unspecified differences between the nature of its regulation vis-a-vis that of RCA, has no apparent relevance to the question of whether the Commission appropriately granted Telenet's application, even if RCA's characterizations of differences in regulatory treatment between itself and AT&T were deemed accurate. If RCA is dissatisfied with its own regulatory treatment vis-a-vis AT&T, there are presumably other means of ventilating that frustration, and obtaining whatever hearing on its merits may be warranted.

H. No Valid Question Concerning Telenet's Legal Qualifications Has Been Presented

RCA faults the Commission's Order for its failure to address the question of Telenet's legal qualifications, first raised by RCA (improperly) in its Reply to Telenet's August 3, 1976 Opposition, with a claim that Telenet had impermissibly extended its domestic service to Canada. The make-weight nature of the argument is demonstrated by the fact that in the intervening seven months, RCA has failed to address an independent complaint to the Commission on this subject, despite the availiability of ample procedures for treating any perceived unlawfulness in Telenet's current offering; See Sections 1.571, et seq., of the Rules. Telenet's tariff explicitly includes service to Canada; has not been rejected or suspended (or even questioned); and thus must be presumed lawful.

III. Conclusion

While RCA's Petition has served to highlight several areas in which the Commission's Order might have been made more explicit, none of the arguments which it makes should affect the Commission's judgment that the authorization of Telenet to enter the international data communications market would serve the public convenience and necessity.

RCA's suggestion that the Commission should set aside its authorizations to Graphnet and Telenet, and defer further action with respect to those applications "pending completion of an appropriate proceeding [not yet begun] designed, among other things, to address the feasibility of increased competition in the limited international market and the framework in which such competition may take place" (Petition, page 7) is the familiar liturgy utilized by the established entity seeking to preserve the status quo through the device of "studying to death" any suggestion of the slightest change in that status. The suggestion also presumes, erroneously, two underlying factors: That the applications of Telenet and Graphnet represent no more than "increased competition", and that the international market is somehow "limited".

As to the first point, it has been adequately demonstrated above that the Commission was not merely authorizing "increased competition" in its grant of the Telenet application: It was authorizing a new, innovative service which the International Record Carriers had demonstrated neither the capacity nor the interest in providing. As to the second point, if the current international data communications market is limited, it is because the established carriers have failed to stay abreast of new technology in this rapidly advancing field, or to provide innovative and attractively-priced services. Such a situation would not be ameliorated through the preservation of the status quo, but by authorizing new, efficient, and cost-effective services to meet a latent demand too long ignored by the established carriers.

Respectfully submitted,

TELENET COMMUNICATIONS CORPORATION

By Philip M Walker
Philip M. Walker
Vice President & General Counsel
1050 17th Street, N.W.
Washington, D.C. 20036

By Donald E. Ward
Donald E. Ward
Law Offices of Donald E. Ward
1050 17th Street, N.W.
Washington, D.C. 20036

March 14, 1977

Its Attorneys

Attachment A

RCA

February 6, 1976

Mr. Adrien R. Auger
Chief, Complaints and Service
Standards Branch
Federal Communications Commission
Washington, D.C. 20554

mberger

airs and
angements

Dear Mr. Auger:

This is in reply to your letter of January 28, 1976 concerning certain allegations raised by Telenet Communications Corporation concerning the operations of Tymshare, Inc. Specifically, Telenet alleges that Tymshare is utilizing an overseas leased circuit provided by RCA Globcom in a manner which is not in accordance with the regulations contained in RCA Tariff F.C.C. No. 58.

When Tymshare initially applied to RCA Globcom for overseas leased channel service we were informed that the circuit was to be used exclusively by the customer for its own business requirements and that all communications would relate solely to the customer's own business. Consequently, Tymshare's application for service was processed and the overseas leased circuit was inaugurated. In view of the laws relating to privacy of communications, once a leased circuit is inaugurated, RCA Globcom is circumscribed in its ability to check on or monitor communications being transmitted or received over that circuit to determine whether they relate solely to the business of the customer.

RCA Globcom is aware of the exchange of correspondence between the Commission, Telenet and Tymshare. We particularly noted the allegation raised by Telenet in its letter of September 19, 1975 concerning Tymshare's use of overseas leased circuits and we also noted Tymshare's response of October 29, 1975. Because Telenet's initial letter did not seem to us to contain the evidence necessary to support drastic action of discontinuing service to Tymshare, we accepted the answer contained in Tymshare's response. We are, however, concerned with the exhibits attached to Telenet's recent letter of January 21, 1976 which provide indication that other entities may be utilizing Tymshare's overseas leased circuits for the purpose of providing message switching service to their clients. Accordingly, it is our intent to pursue this matter further with both our customer and our overseas correspondent. We are, of course, equally interested in the results of the Commission's investigation with respect to all of the questions raised by Telenet. If, as alleged by Telenet, it is determined that Tymshare is operating as a common carrier and therefore becomes obliged to obtain authorization pursuant to Section 214 of the Communications Act and file appropriate tariffs pursuant to Section 203 of the Act, then RCA Globcom will of course take such action with respect to the overseas leased channel service to Tymshare as is referred by such a Commission decision.

Because of the seriousness of this matter RCA Globcom would appreciate the opportunity to meet with the Commission staff for the purpose of clarifying the rights and regulations of carriers and users in the leasing field. In this connection, we feel that it would be beneficial for the Commission to convene a meeting of all interested parties.

Very truly yours,

AES/ab

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In re Applications of	
GRAPHNET SYSTEMS, INCORPORATED	File Nos. I-P-C-11 I-P-C-11A
For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, The United Kingdom and West Germany.	
TELENET COMMUNICATIONS CORPORATION	File No. I-T-C-2634
For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	
RCA GLOBAL COMMUNICATIONS, INC.	File No. I-T-C-2657
For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	
WESTERN UNION INTERNATIONAL, INC.	File No. I-T-C-2658
For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	

To: The Commission

OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION

Graphnet Systems, Inc. (hereinafter "Graphnet"), by its attorneys, submits herewith its opposition to the "Petition

For Partial Reconsideration," filed herein by RCA Global Communications, Inc. (hereinafter "RCA"), on February 10, 1977.

I. INTRODUCTION AND SUMMARY

A. Preliminary Statement

1. In January of 1974, the Commission granted Graphnet certificate authority to provide certain new and innovative communications services within the continental United States. Utilizing communications channels obtained from other carriers, Graphnet proposed to establish a network which would permit, for the first time, communications between virtually any types of digital input devices and receiving facsimile terminals. Graphnet commenced operations in January of 1975. Approximately one year later, on February 18, 1976, Graphnet filed an application with the Commission, requesting authority to extend the availability of that service to a part of the international communications marketplace. Graphnet's application proposed to permit subscribers in either the continental United States or eleven Western European countries to utilize Graphnet's unique any-terminal-in, facsimile-out capability.

2. By Memorandum Opinion, Order, Authorization and Certificate, released January 11, 1977 (FCC 77-2) (hereinafter cited "Decision"), the Commission granted Graphnet's application. In so doing, the Commission found that there is a "fast growing

need for overseas data communication services," and that this need is "not presently being met by existing carrier service offerings." (Decision, ¶4.) Graphnet's proposal, the Commission found, would satisfy this need through innovative and sophisticated communications services:

> The authorization of Graphnet . . . would extend the benefits of [its] . . . capability and expertise into the competitive international environment and make available to the public the benefit inherent in [its] . . . service offerings.

(Decision, ¶9.) The institution of Graphnet's services was subje[illegible] the submission of appropriate implementing agreements with foreign correspondent carriers.

3. The same Commission decision granted three other pending applications -- those by Telenet Communications Corporation, by RCA and by Western Union International, Inc. All four proposals were considered together because --

> . . . each applicant seeks to provide a form of enhanced data communication service between the United States and various overseas points. The proposals seek to make services available to users for whom overseas data communications have previously been technically impossible or economically inefficient. Each of the proposals involves "specialized" overseas data communications services that are tailored to meet the needs of particular types of data communications users.

(Decision, ¶3.)

4. In its "Petition for Partial Reconsideration" (hereinafter cited "Petition"), RCA requests the Commission to "set

aside" authorizations granted to Graphnet and Telenet or, alternatively, to defer their implementation "pending the conduct of an appropriate inquiry into the impact that such authorizations, and others, will have upon existing carriers and carrier services in the international market."[1/] Graphnet will respond herein to RCA's petition, to the extent it seeks reconsideration of the Commission's grant of Graphnet's captioned application.

B. Summary of Graphnet's Position

5. Recognizing "a fast growing need for overseas data communications services," and knowing that current IRC services "do not have the inherent capability to provide data transmission services for a substantial number of potential users in a cost effective manner," the Commission concluded "that the public interest requires more and better service." (Decision ¶¶ 4, 5, 6.) Noting both Graphnet's "proven capability and expertise in the provision of sophisticated domestic data communications services," and the fact that IRC services "do not

---

[1/] Petition, pp. 17-18. The alternative relief urged by RCA is tantamount, of course, to a stay request. And verbiage in the footnote at page 2 of RCA's pleading indicated RCA's intention that it be so considered. Quite obviously, however, RCA has neither attempted to meet, nor succeeded in satisfying, the familiar criteria for stay requests set forth in Virginia Petroleum Jobbers Assn. v. FPC, 259 F.2d 921 (D.C. Cir. 1958). See American Tel. & Tel. Co., 27 F.C.C.2d 151, 160 (1971).

in themselves make possible communications between incompatible terminals or computers," the Commission granted Graphnet's captioned application. RCA asks that the Commission reconsider that action.

6. The Commission's findings concerning the public need for the type services involved are not contested. The present unavailability of such services is unchallenged. And Graphnet's technical competence to provide the service features proposed is not called into question. Rather, RCA simply doesn't want a non-IRC providing any such services, even if the price the public must pay is the unavailability of admittedly needed services -- services RCA has not, and cannot, furnish.

7. It cannot, of course, persuasively present its preference in so direct a fashion. As a consequence, it has formulated a host of familiar claims -- assertions of procedural deficiencies and contentions of inadequate Commission evaluation. Prominent, of course, are claims of potentially adverse economic impact. But since it is unable to substantiate any injury to itself, RCA invokes asserted adverse consequences to the IRCs as a group. And since any grant to Graphnet will result (naturally) in the "restructuring" of the international telecommunications market, lengthy policy-making proceedings are said to be a necessary prerequisite. But only for non-IRC proposals.

8. In Graphnet's view, RCA has presented no basis whatever to reconsider the Commission's action. What was before the

Commission in Graphnet's application was a modest proposal to provide a new, needed service, not to "restructure" the international communications field. The Commission's consideration of both that application and the related pleadings was complete and reflective, and the public interest judgments made were fully supported. To the extent the Commission's action is said to have the cataclysmic results RCA claims, RCA bears the burden of substantiating its position. Yet when one sifts through the well-turned rhetoric, there are simply no supporting facts. And even as to the generalized arguments advanced, most have already been disposed of in the Commission's decision.

9. Based on the information before it, the Commission properly granted the Graphnet application. And as will be shown below, RCA's arguments herein are entirely without merit. Yet so long as RCA and other IRCs can maintain a cloud over the vitality of the Commission's action by continuing litigation, that long will they have impeded a full implementation of the authority granted. Graphnet urges a firm and early denial of the RCA petition.

II. ARGUMENT

A. On Their Face, RCA's Arguments Are Inconsistent With Criteria Applicable To Reconsideration Requests

10. Throughout its Petition herein, RCA repeatedly argues that the Commission's grant of authority to Graphnet is defective

because the decision failed to "consider" or "address" certain matters. With that as its excuse, RCA then offers its own discussion of all such matters. In point of fact, however, the Commission's decision "considered" and "addressed" all pregrant contentions advanced by RCA concerning Graphnet. A brief review of the earlier RCA pleadings confirms the point.

11. In opposing Graphnet's application, RCA filed three brief pleadings with the Commission -- a "Petition to Dismiss or Deny" on July 2, 1976 (hereinafter cited "RCA Petition"); a "Supplement to Petition to Dismiss or Deny" on July 12, 1976 (hereinafter cited "RCA Supplement"); and a "Reply" on August 27, 1976 (hereinafter cited "RCA Reply"). In those pleadings, RCA's principal ground for objection -- as that of the other IRCs -- was the absence of agreements between Graphnet and foreign correspondent carriers.[2] That circumstance alone, RCA argued, required a summary dismissal of the application.

---

[2] RCA Petition, pp. 3-4; RCA Supplement, pp. 3-5; RCA Reply, pp. 3-5.

12. In its July, 1976, petition (p. 7), the only other matter raised of pertinence here was the following one-sentence assertion:

> [W]e must point out . . . that were Graphnet permitted to enter and serve the European market, in addition to that within the continental United States, it would obtain an unfair competitive advantage over those licensed voice/record carriers, including RCA Globcom, which are restriced [sic] in their authorizations from providing domestic record service and from originating or terminating traffic beyond a limited, few Gateway cities. 3/

No facts or explanations were ever offered in that or any subsequent pleading addressed to Graphnet's application.

13. In its Reply, RCA enlarged its assertions to include a series of one-liners concerning Graphnet's "qualifications." As to Graphnet's "technical qualifications": "Serious question

---

3/ Two other points were raised in RCA's Petition and Supplement, but neither one of decisional consequence at this point. First, apparently unaware of an April 1, 1976, amendment to Graphnet's application, which proposed to utilize the facilities and services of Communications Satellite Corporation under its Tariff F.C.C. No. 9, RCA argued in its July 2, 1976, Petition (pp. 1-3) that Graphnet's initial proposal to use AT&T services was a fatal infirmity. In its July 12, 1976 Supplement, however, RCA realized its oversight, and acknowledged its objection on the point had been mooted.

Second, in its Petition (pp. 4-6), RCA also raised questions concerning the scope of Graphnet's domestic certificate authorizations, as it might relate to the requested international authorization. See also RCA Reply, pp. 7-8. Such matters were disposed of by the Commission's actions in Graphnet Systems, Inc., 61 F.C.C.2d 685 (1976) and herein (see Decision, footnote 4), and RCA has not advanced any contentions in that regard in its reconsideration request.

exists as to whether Graphnet has implemented the type of system described in its domestic authorization and, hence, whether it has the capability to do so at all." (RCA Reply, p. 6.) Regarding Graphnet's "financial qualifications": "[W]e note that its present desire to extend its service to a substantial portion of Western Europe would be an ambitious undertaking that would require considerable financial commitment." (Id. at pp. 6-7.) With respect to Graphnet's "legal qualifications": "[T]he instant application appears to be broader in scope and intent than Graphnet elects to admit and, we believe, this raises serious questions about its candor before the Commission." (Id. at p. 8.) While long on broadsides, RCA's contentions in these regards were devoid of any supporting facts.

14. Graphnet responded to all of the contentions RCA and others had advanced in opposition to its application.[4/] And in its decision, the Commission addressed and disposed of each of the points. As to the issue of agreements with foreign carriers, the Commission evaluated the matter and concluded that, in light of the particular circumstances involved, a strict "enforcement of this requirement might well disserve the public interest." (Decision, ¶13.) Instead, the Commission conditioned its authorization on Graphnet's filing "satisfactory agreements prior

---

[4/] "Opposition on Behalf of Graphnet Systems, Inc.," filed August 10, 1976 (hereinafter cited "Graphnet Opposition").

to initiation of these services" -- an approach the Commission found "adequately satisfied" its "regulatory needs." (Id. at ¶¶ 13, 28.)

15. With respect to RCA's assertions that Graphnet would gain some competitive advantage over existing IRCs, the Commission's decision treated the matter at length. (Decision, ¶¶ 14-15.) While rejecting RCA's plea to deny the application, the Commission did impose on Graphnet reporting requirements, on the basis of information from which the Commission could monitor developments, and take any such actions as future circumstances might indicate. (Id. at ¶¶ 14, 22.) Finally, the Commission specifically found Graphnet to be "legally, technically and otherwise qualified to offer [its] proposed services." Indeed, the Commission specifically observed Graphnet to be an authorized common carrier "with proven capability and expertise in the provision of sophisticated domestic data communication services." (Decision, ¶9.)

16. The background set forth above is particularly significant in light of the legal standards which govern requests for reconsideration of Commission decisions. Under Section 405 of the Communications Act, and Section 1.106 of the Commission's Rules, the burdens imposed on a petitioner for reconsideration are far greater than on one seeking relief in the first instance. In evaluating reconsideration requests, the Commission measures 'allegations of inquiry to the public interest by a more exacting

standard" than that applied prior to reaching a decision -- something the courts have held the Commission is "entitled, if indeed not required, to do." Valley Telecasting Co. Inc. v. FCC, 336 F.2d 914, 919 (D.C. Cir. 1964). See also Springfield Television Broadcasting Corp. v. FCC, 328 F.2d 186 (D.C. Cir. 1964).

17. The Commission has made clear that petitions for reconsideration are not properly a vehicle for merely rearguing pre-decision positions. As it was stated more than a decade ago in WWIZ, Inc., 37 F.C.C. 685, 686 (1964), aff'd sub nom. Loraine Journal Co. v. FCC, 351 F.2d 824 (D.C. Cir. 1965), cert. denied 383 U.S. 967 (1966):

> [I]t is universally held that rehearing will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken. . . . The statutes and regulations make plain that the same rule is to be applied to the Commission.

And that principle has been uniformly followed since. See, e.g., Ralph J. Silkwood, 42 F.C.C.2d 821 (1973); Cable TV Co., 33 F.C.C.2d 787 (1972).

18. Similarly, where new matters are raised for the first time on reconsideration, the petitioner must demonstrate persuasively why such matters were not able to be raised in the pre-decision proceedings. And the reason is quite simple -- to avoid abuse of the decisional process by "sandbagging." As the court in Colorado Radio Corp. v. FCC, 118 F.2d 24, 26 (D.C. Cir. 1941), put it:

> We cannot allow the appellant to sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed.

See Valley TV Cable Co., Inc., 55 F.C.C.2d 875 (1975).

19. In reviewing the RCA petition here, it is vitally important to bear these standards in mind. For virtually without exception, the contentions now pressed are flatly inconsistent with them. In part, RCA simply reargues -- albeit at somewhat greater length -- its pre-grant positions. And in part, having badly misjudged the Commission's ability to think the unthinkable, RCA offers new contentions it could have presented earlier but failed, in its overconfidence, to do so.[5/] For the reasons set forth below, none of the bases offered for reconsideration of Graphnet's authorization warrants the relief requested.

[5/] See, condescendence-wise, RCA's Supplement at p. 4, footnote:

> [T]oo much time has been expended, not only by us but by Commission staff, in the pursuit by Graphnet of its ill-considered dreams and schemes.

B. On Their Merits, RCA's Three Grounds For Reconsideration Do Not Warrant the Relief Requested

1. The Commission Did Not Adopt a "Policy" Of "Open Competition" in the International Data Communications Field

20. A major portion of RCA's presentation is devoted to attacking a straw man of its own making. At pages 3 through 7 of its pleading, RCA argues at length that the Commission's decision is "really" the establishment of an entirely new policy -- an extension of "its domestic competition policy of open entry to the international market." (Petition, p. 3.)[6/] And RCA decries the Commission's "unqualified pro-competition policy" as reflecting an "intention to restructure unilaterally the international market for data communications." (*Id.* at pp. 5, 3.)

21. The adoption of this new policy, RCA contends, was improper because the Commission failed "to ascertain the effect of such policy extension upon existing U.S. international carriers or upon the public which relies on their services," and failed adequately "to consider the views of foreign

---

[6/] See also Petition, p. 3, footnote:

> The Commission appears to attempt . . . opening to unlimited competition the international communications sector.

telecommunications entities." (Id. at p. 3.)[7] Indeed, RCA finds the decision here one of a series of Commission rulings sharing the same asserted infirmities, and which in combination are "fundamentally inconsistent with generally accepted statutory and judicial standards." (Id. at p. 5.) What about Graphnet? Well, RCA "certainly does not object to competition" (id. at p. 6), but "at the very least," Graphnet's authorization should be "deferred" until the conclusion of an "appropriate proceeding" which addresses "the feasibility of increased competition in the limited international market" (id. at p. 7).

22. RCA's objective -- to avoid any new entrant in the international field -- is clear. However, its position is based on the demonstrably erroneous predicate that the Commission's decision was not an adjudication of the specific applications involved, but rather a legislative pronouncement establishing rules or policies of general applicability. The words of the Commission's decision, however, are precisely contrary. In granting the applications, the Commission focused on the specifics of each proposal, and on the particular applicants,

---

[7] In the latter regard, RCA notes the IRCs' earlier success in marshalling foreign correspondents' "immediate and unqualified" objections to the initial Resale decision's inclusion of IRC services, "thus forcing the Commission to retract its resale decision upon reconsideration." (Petition, p. 3, footnote.)

in reaching its determinations. And it specifically stated that, while it would not refuse to consider future applications,

> . . . we are not herein making a general finding that would require the grant of any application proposing a new service or new transmission technique.

(Decision, ¶10.) Moreover, the Commission made clear that the authorizations it was granting would provide valuable information, on the basis of which the Commission could delineate any needed "future policy concerning these overseas data communications services." (Decision, ¶11; emphasis added.)

23. RCA's argument in this regard, therefore, should be summarily rejected. The decision issued, as it related to Graphnet, was an adequately founded adjudicatory proceeding. Contrary to RCA's suggestion, the Commission did not declare an "open entry" policy in the international market. Nowhere did the Commission state that it would not consider relevant and factually supported arguments directed to the potential impact of any future proposals. Rather, the Commission indicated that it would permit applicants "to demonstrate the public advantages" of their proposed offerings, and that it would continue to make judgments relative to the myriad of public interest factors on an ad hoc basis in the context of the specific proposals then before it. In sum, the Commission has not denied any party an opportunity to be heard on the question of impact (or any other matter). It has merely concluded that it will not summarily refuse to consider new proposals on the basis of any preconceived

notion that additional services would be harmful to the existing carriers or their services.

2. The Commission's Decision Considered All Substantial Issues Necessary to Its Grant of Graphnet's Application In the Public Interest

24. RCA's fall-back position appears to be that, even if the Commission's action granting the Graphnet application is viewed to be licensing adjudication, the decision "fails to address several substantial issues raised by RCA Globcom . . . and thus, *sub silentio*, it improperly rejects those issues and RCA Globcom argument in connection therewith." Petition, pp. 7-8. RCA's rhetoric, however, bears little relationship to the facts. The "issues" *actually raised* by RCA in its pre-grant filings concerning Graphnet were directly "addressed" -- and disposed of -- in the Commission's decision. And the ultimate "issue" of whether the public interest would be served by a grant of the Graphnet application was fully and adequately considered and resolved.

25. RCA's presentation on the point offers three "issues" which the Commission is said to have failed to address: (a) the absence of Graphnet agreements with foreign correspondents (Petition, pp. 8-10); (b) the impact of Graphnet's authorization "upon the viability of existing U.S. overseas carriers (*id*. at pp. 10-12); and (c) Graphnet's legal, technical and other

qualifications (id. at p. 12).[8/] As to the first, RCA is wrong. The matter of agreements with foreign correspondents was thoroughly debated in the pre-grant pleadings, and directly discussed at paragraph 13 of the decision. While RCA (and the other protesting IRCs) had argued that the Commission should not even consider Graphnet's application in the absence of such agreements, the Commission concluded otherwise:

> In the present situation . . . enforcement of this requirement might well disserve the public interest. Since . . . Graphnet . . . [is a] new prospective [entrant] into the international communications market, strict enforcement of such requirements might simply encourage foreign correspondents not to consider appropriate agreements for the overseas termination of Graphnet . . . services. We believe that in these circumstances our regulatory needs can be adequately satisfied by conditioning the authorizations to require the execution and filing of satisfactory agreements prior to initiation of these services, rather than prior to their authorization.

[8/] In a footnote on page 8 of its petition, RCA provides a litany of additional "issues" the Commission assertedly failed to address. As to certain of those "issues," as is shown herein, that contention is simply wrong. As to the remainder which relate to Graphnet, none were advanced by RCA in its pre-grant pleadings. Even now, RCA apparently assumes that it need only identify an area of inquiry for the Commission to be justified -- indeed, according to RCA, required -- to reconsider the grant of an otherwise acceptable application proposing new and much needed services to the public. Such an understanding of the law, however, is totally at odds with established judicial and Commission precedent, and is at odds with basic standards of administrative due process. See, e.g., A.C. Elliott, Jr., ___ FCC2d ___, 38 RR2d 1605 (1976); WKBN Broadcasting Corp., 39 FCC2d 116, 25 RR2d 835 (1972). And see also Hudson Valley Broadcasting Corp., 320 F.2d 723 (D.C. Cir. 1963); WLVA, Inc. v. F.C.C., 459 F.2d 1286 (D.C. Cir. 1972).

(Decision, ¶13.) RCA's petition fails to demonstrate why the Commission's review and acceptance of such agreements as a condition subsequent to the authorization[9/] -- rather than as a condition precedent -- will adversely affect the public interest or constitutes an abuse of the Commission's discretion. Indeed, not a single reason is offered why such an approach is not an adequate means by which the Commission can evaluate such specific elements as "the terms and conditions of service and the division of tolls" (Petition, p. 9) -- particularly when the alternative would be to deny new carriers the very means by which to secure such agreements with foreign correspondents.

26. Distilled of all hyperbole, RCA's complaint is not that the Commission did not consider the matter, but that it was not persuaded to RCA's view. Such circumstances, however, provide no valid basis for reconsideration. Since the contention here is but a renewal of an argument already disposed of in the Commission's decision, a summary rejection of RCA's position in this regard is fully warranted.[10/]

[9/] The Commission specifically conditioned its authorization to Graphnet "on the Commission's approval of operating agreements with appropriate foreign entities." (Decision, ¶28.)

[10/] Graphnet's position on the matter of agreements was set forth in the August 10, 1976, "Opposition on Behalf of Graphnet Systems, Inc.," at pages 4-12. To the extent any further consideration of that matter would be appropriate, that portion of Graphnet's earlier presentation is specifically incorporated herein by reference.

27. As to the second "issue" the Commission "failed properly to take into account" -- the "impact" of Graphnet's grant on "the viability of existing U.S. overseas carriers" (Petition, p. 10) -- RCA's position is not entirely clear. Basically, however, it seems to be that the international data communications market is small and that Graphnet can underprice competitive IRC services, since such "resellers" do not have constraints of existing facilities investments, and in being permitted to deal with Comsat, are not forced to take channel capacity from the IRCs. (Petition, pp. 10-12.) 11/ Insofar as the potential market size is concerned, the Commission set forth its views and estimates in the decision (¶¶ 4-8), and RCA offers nothing but conspicuous equivocation, claiming that the "dimensions of the international market [in which RCA has operated for many years] are not known at this time," but conceding that the market "is growing and will prove to be substantial." (Petition, p. 10.) Regarding the other factors RCA now raises concerning the "impact" of Graphnet's grant on the IRCs' "viability," certainly such considerations were

---

11/ In this connection, and without contesting the Commission decision's imputation of "authorized user" status to Graphnet, RCA suggests that in some fashion Graphnet is not properly an authorized user of Comsat services. (Petition, p. 11; see also id. at p. 8, footnote.) As a certificated common carrier, however, Graphnet is as entitled to utilize Comsat's facilities as any other carrier. Authorized User, 4 F.C.C.2d 421 (1966), 6 F.C.C.2d 593 (1967).

subsumed in the Commission's discussion at paragraphs 14-15 of the decision. And RCA has provided no new factual basis -- indeed, it has never offered anything other than its generalized opinions -- which shows the Commission's conclusions in this regard to have been wrong.

28. In its decision the Commission properly recognized that it "cannot refuse to authorize services which would clearly benefit the public merely because a potential [IRC] competitor might arguably be restricted in the nature of his competitive response," either as a result of a legislative provision or otherwise. (Decision, ¶15.) To the extent RCA wishes to reduce or eliminate alleged competitive disadvantages in the present international market structure it has appropriate remedies available at the Commission or the Congress to do so.[12]

29. Finally, as to the matter of Graphnet's "qualifications," RCA's presentation fails even to provide a clear articulation of what it views to be the Commission's error. It first refers to its pre-grant statements concerning "qualifications," opines that "Graphnet's common carrier operations, we suspect, are at best [financially] marginal," and "seriously question[s] . . . whether in view of these financial considerations, these entities ought to be licensed to expand

---

[12] See, e.g., Tropical Radio Telegraph Co., 40 F.C.C.2d 1168, 1178 (1976).

considerably their services beyond the United States." (Petition, p. 12.) RCA's position is unworthy of any serious consideration. Graphnet has been an authorized common carrier for more than two years, and had twice been found qualified by the Commission prior to the decision in this case. The application here included all information, including financial data, necessary to the Commission's finding "Graphnet . . . to be legally, technically and otherwise qualified to offer [its] proposed services." (Decision, ¶9.) RCA has shown nothing which would indicate that finding to have been in error.

3. RCA's Claims of Adverse Economic Impact Are Untimely and Unsupported

30. The final portion of RCA's petition is devoted to the Commission's asserted failure to evaluate, "adequately and appropriately," Graphnet's potential impact on "the existing international market place and the carriers providing service therein." (Petition, p. 13.) While the decision did address the matter, the Commission, in RCA's view, "misse[d] the point." (*Ibid.*) Contrary to the Commission's stated beliefs (Decision, ¶15), RCA has no particular competitive advantage over Graphnet, its ability to interconnect with any domestic carrier is of no particular significance, and the Commission's view of Section 222 of the Act is "disingenuous." (Petition, pp. 13-15.) More fundamentally, RCA contends, the differing Commission approaches

to rate regulation as between RCA and Graphnet are a matter warranting further attention. (Id. at pp. 15-17.)

31. Because RCA's broad rhetoric is often distracting, it is important again to recall the adjudicatory nature of the Commission action being challenged here -- a grant of certificate authority to Graphnet. To the extent RCA contends that the Commission should generally examine the international data field, and formulate overall policies, it is privileged to seek rulemaking. Certainly, any real RCA concern about U.S. IRCs generally, or the overall marketplace, is more appropriately to be considered in that context. What is at issue here, however, is not properly the impact of Graphnet's grant on IRCs generally, or on the market as a whole. For RCA cannot purport to speak for either. Rather, the procedural nature of this adjudicative proceeding at this juncture is to evaluate whether any claims of injury to RCA as a result of Graphnet's authorization warrant a reversal of the Commission's action.

32. So viewed, RCA's position is nothing less than ludicrous. Can RCA -- the largest of the U.S. IRCs -- truly be heard to say that the grant to Graphnet threatens either its economic survival or its continued provision of services? Is its financial posture so attenuated, or its position in the international communications marketplace so fragile, that the entry of a small company into a small segment of the market forebodes catastrophy? Most importantly here, has RCA offered one

shred of evidence -- any facts whatever -- which even remotely suggest such imaginings to be likely, or which show the Commission's conclusions otherwise to be wrong? The answer, of course, is no. Rather, its contentions here are but quibblings with the Commission's conclusions.

33. RCA notes, for example, that it has been required to provide its domestic and overseas services via separate corporations, but that no such requirement is imposed upon Graphnet. Even assuming that this presents a meaningful competitive concern, recognizing the vast market strength possessed by RCA, the Commission simply did not find such a restriction necessary in the case of Graphnet:

> In the case at hand we can see little public benefit in requiring Graphnet . . . to establish separate corporations . . . [It] is a small entity involved only in specialized competitive services and . . . would have no significant revenue base in one market by which it might obtain an advantage over existing or new entities in the other market.

(*Decision*, ¶14.)[13/] In its Petition here, RCA makes no effort to demonstrate factually the "public benefit" to be obtained in requiring Graphnet to establish separate corporations, or to

---

[13/] In this connection, of course, the Commission has required Graphnet to keep accurate accounts of both domestic and international traffic and revenues so that the Commission will have appropriate data to use in determining "whether the suggested corporate arrangements would better serve the public interest" at some future date. (*Decision*, ¶14.)

identify any public detriment which will result from the absence of such a requirement. Nor does RCA offer any particulars concerning the effect, either on itself or the public, resulting from the alleged "competitive disadvantage" which Graphnet's authorization will effect. In the absence of such a showing, the Commission has no basis for altering its earlier conclusions in this regard.

34. Similarly, RCA generally reiterates its claims of competitive disadvantage by virtue of gateway limitations imposed by Section 222 of the Act. Yet the Commission has already found RCA's position -- to which nothing of substance has been added here -- wholly unsupported:

> RCA has not described the precise nature or degree of the competitive disadvantage it believes will accrue to it, nor presented any probative evidence to support its allegations.

(Decision, ¶15.) Indeed, on the merits, the Commission affirmatively found adverse competitive consequences unlikely:

> Our own analysis indicates that the limitation placed upon RCA and the other international telegraph carriers by Section 222 is not likely to place RCA at a competitive disadvantage in the provision of these kinds of services . . .

(*Decision*, ¶15.) RCA's petition here offers only conclusory and unsupported generalities to rebut the Commission's finding.[14/]

35. To the extent RCA has advanced contentions of adverse economic impact, as noted earlier, it has failed to identify or quantify any harm to itself, apparently more comfortable generalizing about *market* impact. Yet even in this broader context RCA's arguments are unavailing. In what is by now a boilerplate assertion, RCA alleges the Commission's authorization to be inconsistent with the holdings in *FCC v. RCA Communications, Inc.*, 346 U.S. 86 (1955) and *Hawaiian Telephone Co. v. FCC*, 498 F.2d 771 (D.C. Cir. 1974). As RCA acknowledges, however, those holdings merely require that the Commission conclude "that new competition is 'reasonably feasible' and that there are gounds for the 'reasonable expectation that competition may have some beneficial effect'." (Petition, p. 5.) RCA does not assert the absence of either conclusion in the Commission decision. Neither does it undertake to show that the Commission's findings of likely public benefit are without foundation, or that Graphnet's entry into the market is not "reasonably feasible." Indeed, if anything, it appears RCA views Graphnet's entry all too feasible.

[14/] While RCA asserts that an advantage derives from Graphnet's ability to act as a "single source supplier" while RCA is restricted to domestic access at the Gateway cities, RCA again fails to demonstrate *precisely* how this "amount[s] to an undeserved marketing advantage" (Petition, page 15), or in what meaningful way such an advantage -- even if it can be termed such -- will hinder RCA's ability to compete or otherwise adversely affect its operations.

III. CONCLUSION

36. In its pre-grant pleadings, RCA sought Commission rejection of the Graphnet application on the principal ground that appropriate agreements with foreign correspondents had not yet been obtained. Other than a passing reference to a then-undefined "unfair competitive advantage" it was said Graphnet would gain, no other question concerning the sufficiency of, or public-interest justification for, the Graphnet application was raised by RCA in any meaningful fashion.

37. Having sat on its hands until the unexpected grant, RCA now seeks to raise a host of questions said to require a reversal of the Commission's judgments. Graphnet submits that the Commission should promptly reject RCA's efforts in this regard. Such issues as RCA's pre-grant objections posed were disposed of in the Commission's decision. And the petition herein does nothing more than renew contentions already once considered. Moreover, as to those RCA contentions presented for the first time here, none warrant the relief requested. Those which assert an improper establishment of an "open entry" policy are patently in error. And those which assert adverse economic consequences are entirely without support.

38. The question to be resolved at this juncture is whether RCA has established that the Commission's grant to Graphnet was in excess of its statutory authority, was an abuse of discretion or was improper as a matter of policy. Graphnet submits that

no such showing has been made. RCA's petition should be denied.

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

By______________________
Edward P. Taptich

____
Norman P. Leventhal

McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D. C. 20036
(202) 296-1600

Its Attorneys

March 14, 1977

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of

GRAPHNET SYSTEMS, INCORPORATED — File Nos. I-P-C-11, I-P-C-11A

For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.

TELENET COMMUNICATIONS CORPORATION — File No. I-T-C-2634

For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.

RCA GLOBAL COMMUNICATIONS, INC. — File No. I-T-C-2657

For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).

WESTERN UNION INTERNATIONAL, INC. — File No. I-T-C-2658

For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.

To: The Commission

OPPOSITION TO RCA'S "REQUEST FOR PARTIAL STAY"

Telenet Communications Corporation, by its attorneys, hereby submits its Opposition to the "Request for Partial Stay" filed herein on March 11, 1977, by RCA Global Communications, Inc. (hereinafter "RCA"), stating as follows:

I. INTRODUCTION

RCA requests that the Commission stay its grant of the application of Telenet Communications Corporation ("Telenet"), contained in the Memorandum, Opinion, Order, Authorization and Certificate released January 11, 1977 ("Order"), pending the occurrence of three events:

> (1) The "conclusion of further Commission and Court proceedings in which the grants . . . are being challenged";
>
> (2) "Ultimate approval by the Commission (after consideration of comments to be filed by interested parties pursuant to appropriate notice procedures to be implemented by the Commission) of operating agreements these carriers may reach with overseas telecommunications administrations"; and
>
> (3) "The initiation and conclusion of an inquiry by the Commission into the effect that these authorizations and others, if implemented, will have upon existing U.S. competitors, their service offerings within the international marketplace, and charges required to be paid by the public."

As will be shown below, RCA has utterly failed to meet the criteria traditionally required of one seeking a Stay - even where the Stay is sought only pending Commisson and judicial review of the action proposed to be stayed. But here, RCA would not be satisfied with a Stay merely pending the completion of review proceedings: It wants the grants stayed virtually in perpetuity, while the Commission institutes, conducts, and concludes a broad-ranging inquiry into the effect upon existing U.S. international carriers of the implementation of these authorization "and [unspecified] others".

Although the Graphnet and Telenet applications were filed nearly one year ago, neither RCA nor any other party has petitioned the Commission for the institution of such an inquiry. While suggestions of the desirability of such an inquiry have been made by RCA and others in their petitions and comments directed to the Graphnet and Telenet applications, these suggestions were totally unsupported with any factual showings or reasoned analysis. RCA's blatant over-reaching suggests that its request for Stay is not seriously intended.

II. RCA FAILS TO MEET THE REQUISITE CRITERIA WHICH WOULD SUPPORT THE ISSUANCE OF A STAY

RCA correctly notes, at page 3 of its Request, that the controlling precedent is Virginia Petroleum Jobbers Ass'n. v. FPC, 259 F2d 921 (D.C. Circuit, 1958). There the Court set forth the following matters required to be demonstrated by one seeking a Stay:

(1) Likelihood that Petitioner will prevail on the merits of its appeal;
(2) Irreparable injury to Petitioner, absent the issuance of a Stay:
(3) Absence of substantial harm to other interested parties in the event a Stay is issued; and
(4) Public interest factors support the issuance of a Stay.

As will be shown below, RCA fails to make a case on any of these points.

A. It Is Unlikely That RCA Will Prevail On Appeal.

RCA argues that the Order by which the Telenet application was granted "is vulnerable to judicial reversal or remand on appeal." In support of this proposition, it proceeds to paraphrase arguments contained in its February 10 "Request for Partial Reconsideration". Telenet has dealt fully with those arguments in its March 14 "Opposition to 'Request for Partial Reconsideration'", which is incorporated by reference herein. Telenet will not burden the Commission further with repetition. Suffice it to say, however, that none of RCA's arguments directed to the Commission's Order warrants the relief which it seeks.[1/]

[1/] Significantly, ITT Worldcom, which has appealed the Commission's Order insofar as it grants the Telenet and Graphnet applications, has not sought a stay.

It is also of some significance that RCA did not petition to deny Telenet's application initially, but chose instead to file "Comments", which, while raising some of the points which it now asserts require reconsideration of the Commission's action, omitted others which it now urges as requiring reversal. Thus, RCA's "Request for Partial Reconsideration" and the instant "Request for Partial Stay" must be judged by a higher standard: See Colorado Radio Corp. v. FCC, 118 F2d 24 (D.C. Circuit, 1941).

B. RCA Has Demonstrated Absolutely No Injury to Itself

Commencing at page 7, RCA attempts to argue that, in the absence of a Stay, it will be irreparably injured. This argument is patently frivolous. RCA speculates that if Telenet obtains an agreement for the provision of its service with a foreign administration, RCA may be "frozen out" from negotiating and implementing agreements with that administration, because of what RCA describes as "a tendency among overseas telecommunications administrations - for the most part government-sanctioned monopolies - to enter operating agreements with only a single, or, at best, a limited number of U.S. carriers for the provision of data services." RCA offers no factual basis for its characterization of the attitudes of foreign administrations. However, assuming that its description is accurate, the "harm", if any, results not from the FCC's grant of Telenet application, but from action of the foreign administration. Moreover, in view of RCA's argument that Telenet should have procured the agreement of its foreign correspondent prior to having received a grant of its application, it seems clear that a Stay of that grant would not preclude Telenet from continuing to seek the agreement of the foreign administration. Thus, there is no relationship between the relief sought by RCA and the asserted injury claimed by RCA.

In fact, of course, RCA has not suffered any injury as a result of the grant of Telenet's application, and will not suffer any injury in the event that such grant is not stayed pending the completion of Commission consideration of RCA's pending "Request for Partial Reconsideration", and any ensuing judicial review proceedings. It cannot point to a single instance where a foreign administraton has declined to enter into an agreement with RCA because of Telenet's outstanding grant of authority.

C. Issuance Of A Stay Will Result In Harm To Telenet

RCA claims that Telenet would not be "adversely affected by the issuance of a Stay" because it does not have a "present capability to furnish direct international service" - by which RCA means that Telenet does not currently have an operating agreement with a foreign administration. Once again, RCA stands logic on its head: If, as it has argued above, foreign administrations are reluctant to enter into operating agreements with a multiplicity of carriers, and if (as is implicit in its argument above) a Stay would diminish Telenet's ability to enter into an operating agreement with a foreign administration, Telenet would be injured as a result of the Stay.

In this connection, RCA points out that "Graphnet and Telenet have entered interconnection agreements with international carriers, the effect of which will be to extend their respective services to varous overseas countries, including those nations which they have been authorized by the Commission to serve independently." (Request for Partial Stay", page 9.) While RCA correctly states the facts, its reference thereto in the context of the instant request is in direct violation of the provision of its agreement with

Telenet that "neither party shall advance the fact that service is to be provided by RCA Globcom and Telenet pursuant to this Agreement as a reason for denial by the Commission of any application filed by either RCA Globcom or Telenet to provide the service contemplated herein . . ." Having contractually agreed not to rely upon the existence of its agreement with Telenet in urging denial of a Telenet application before the Commission, it is grossly inappropriate for RCA to request a Stay premised, in whole or in part, on the existence of such an agreement. While parties may not, by agreement, preclude the Commission fron considering whatever, in the judgment of the Commission, affects the public interest,[2/] they may properly stipulate as to what matters will, or will not, be relied upon by themselves in pleadings directed to the Commission. RCA's violation of its agreement with Telenet in this respect hardly warrants Commission reliance upon the balance of its request.

D. The Public Interest Does Not Support Issuance Of A Stay

In claiming that the public interest requires the maintenance of the status quo, it is clear that RCA equates its narrow private interests with the public interest. Its argument that a grant of Telenet's application "should have been preceded by the most thorough of inquiries (through an

---

[2/] The Agreement in question has been filed with the Commission, and there should be no suggestion here that the quoted language represented an attempt by either party to withhold information from the Commission.

evidentiary hearing) into all the short-term and long-term public interest ramifications of such entry, including the probable effect upon the ability of existing international carriers to furnish their public services" is unsupported by a shred of evidence, or even a specific allegation of one adverse "ramification", much less a showing that institution of the service proposed in Telenet's application would have any effect upon the viability of the established international carriers. Of critical importance, RCA has failed to demonstrate that the public - as opposed to RCA - would be adversely affected in the event that some of the public were to find that a Telenet-instituted service was more desirable than current service offerings of RCA.

Obviously, to deprive the public of the potential availability of an innovative service can hardly be in the interest of the public. RCA's arguments founder on this ultimate truth.

III. CONCLUSION

In summary, RCA's "Request for Partial Stay" is but a compendium of protectionist arguments, internally inconsistent, and resting in part upon the bad faith of RCA in arguing to the Commission that which it had expressly agreed with Telenet not to argue to the Commission. Its request must be summarily denied.

Respectfully submitted,

TELENET COMMUNICATIONS CORPORATION

By: Philip M. Walker
Philip M. Walker
Vice President & General Counsel
1050-17th Street, N.W.
Washington, D.C. 20036

By: Donald E. Ward
Donald E. Ward
Law Offices of Donald E. Ward
1050-17th Street, N.W., Suite 840
Washington, D.C. 20036

March 23, 1977

Its Attorneys

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In re Applications of

GRAPHNET SYSTEMS, INCORPORATED) File ~~Nos. I-P-C-11~~
I-P-C-11A

For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.

TELENET COMMUNICATIONS CORPORATION) File No. I-T-C-2634

For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.

RCA GLOBAL COMMUNICATIONS, INC.) File No. I-T-C-2657

For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).

WESTERN UNION INTERNATIONAL, INC.) File No. I-T-C-2658

For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.

To: The Commission

OPPOSITION TO "REQUEST FOR PARTIAL STAY"

Graphnet Systems, Inc. (hereinafter "Graphnet"), by its attorneys, submits herewith its opposition to the

"Request for Partial Stay", filed herein by RCA Global Communications, Inc. (hereinafter "RCA"), on March 11, 1977.

Preliminary Statement

1. The pleading RCA has filed is a most mischievous document, and one which bears careful scrutiny. Particular care seems indicated in light both of RCA's bold threats of court action, and its demand for action by May 11, 1977. (Request, p. 2, fn.) The appropriate starting point for evaluation, Graphnet suggests, is to view closely RCA's request for relief. At the risk of stating the obvious, it should be recalled that RCA is a petitioner for reconsideration before the Commission. To that extent, the proper limit of a concurrent stay request is one seeking preservation of the status quo until the Commission has ruled on the pending reconsideration request. Here, however, RCA's request is much more ambitious. It demands that the Commission's action with respect to Graphnet --

> . . . be stayed pending and subject to (1) the initiation and conclusion of an inquiry by the Commission into the effect that these authorizations and others, if implemented, will have upon existing U.S. competitors, their service offerings within the international market place, and charges required to be paid by the public;

> (2) the conclusion of further Commission and court proceedings in which the grants of the subject authorizations are being challenged; and (3) ultimate approval by the Commission (after consideration of comments to be filed by interested parties pursuant to appropriate notice procedures to be implemented by the Commission) of operating agreements these carriers may reach with overseas telecommunications administrations. Such stay should remain in effect until all of the foregoing events take place.

(Request, p. 2.)

2. RCA's, in other words, is not your garden variety stay request. Rather, under the heading of a stay motion, RCA has not only asked that Graphnet's authorization be deferred pending reconsideration, but has included as well requests for an evidentiary hearing on Graphnet's application, for the initiation of a broad policymaking inquiry on international data communications generally, and for the establishment of new procedures to be applied when Graphnet seeks to implement its agreements with foreign administrations. It is important at the outset, therefore, to recognize the peripheral nature of most of RCA's requests for relief.

3. As to the need for evidentiary hearings, either on Graphnet's "qualifications," on the "impact" of Graphnet's grant on the IRCs, or on the "international data

marketplace", RCA has offered nothing more in justification than it provided in its reconsideration request.[1] Similarly, as to the need for new procedures relating to implementation of future Graphnet/foreign correspondent agreements, RCA has offered nothing whatever in support of that notion. Nor has it shown usual tariff processes inadequate to safeguard whatever public interest entitlements to notice may be involved. Accordingly, in these respects, it is clear that no adequate showing has been made which would permit favorable action on RCA's request.

4. Moreover, while RCA has included in its prayer for relief a stay pending judicial review, it simply has no standing to make such a request at this juncture. As RCA itself points out, it is ITT Worldcom that petitioned the U.S. Court of Appeals for review of the Graphnet and Telenet grants. If a stay pending appeal is to be sought, it is ITT Worldcom, not RCA, which is the proper party to make such a request. Like it or not, RCA's stay request must be considered in the context of its status as a petitioner for reconsideration. Graphnet has limited its response within that framework. And

---

[1] In this regard, RCA appears to seek an indefinite moratorium on any authorization in the international data field, borrowing a page from AT&T's book on domestic specialized carriers. There is one important difference, however. AT&T at least feigned the offer of factual support; RCA here offers only its gratuitous surmize. And AT&T's request was denied in any event.

for the reasons which follow, Graphnet submits that RCA's stay request, so viewed, should be summarily rejected.

RCA Has Failed To Satisfy Pleading Criteria Applicable To Motions For Stay

5. As RCA has acknowledged (Request, p. 3, fn.), the standards which govern petitions for stay pending reconsideration are those set forth in Virginia Petroleum Jobbers Ass'n. v. FPC, 259 F.2d 921, 925 (D.C.C.v. 1958):

1. A strong showing that petitioner is likely to prevail on the merits of [its reconsideration request];
2. A showing that, absent the issuance of a stay, petitioner will be irreparably injured;
3. A showing that issuance of a stay will not substantially harm other interested parties, and
4. A showing that the public interest lay in the issuance of a stay.

In this case, RCA's petition satisfies none of those criteria.

A. There Is No Likelihood RCA Will Prevail On The Merits Of Its Reconsideration Request

6. As indicated above, the scope of relief requested by RCA herein is seriously misconceived. Consequently, certain of its efforts to meet the Virginia Petroleum

Jobbers criteria are somewhat distorted. RCA's discussion of the "likelihood of prevailing" element, for example, is askew. Rather than urging its likelihood of prevailing on the merits of its reconsideration request, RCA looks further ahead, discounts whatever the Commission may do on reconsideration in the interim, and argues "a clear likelihood of probable success on the merits of any appeal that might be taken." (Request, p. 3; emphasis added.) Since Graphnet is unable to know what the Commission's ruling on reconsideration may contain, much less what appellate points RCA might ultimately present a reviewing court thereafter, Graphnet is unable to address the likelihood of RCA's prevailing in an appeal. Insofar as RCA's likelihood of prevailing on the merits of reconsideration request, however, it is clear that no persuasive showing has been made.

7. For the most part, RCA's discussion is merely a summary reiteration of its contentions on reconsideration. Thus, RCA asserts error in the Commission's having failed to conduct evidentiary hearings on either Graphnet's qualifications "to hold international licenses", or the impact Graphnet's authorization will have on existing IRC services and dealings with foreign administrations. (Request, pp. 4, 5.) It contends that the Commission improperly failed to address "several questions raised by RCA." (Ibid.) No "reasoned explanation"

of the Commission's "abrupt change" in the practice of requiring agreements with foreign correspondents is asserted. (Id. at 4-5.) And finally, the grant to Graphnet is said to be not only "an unreasoned abandonment" of gateway policies, but an action which "bestows an unreasonable discriminatory preference upon Graphnet . . . , one for which no logic or justification exists." (Id. at 6.)

8. In opposing RCA's petition for reconsideration herein, Graphnet responded in detail to each of RCA's arguments.[2] Graphnet's position will not be repeated here. However, the arguments presented earlier are hereby incorporated by reference. Suffice it to say at this juncture, RCA has added nothing to the contentions it advanced in support of its reconsideration request. And just as those contentions were inadequate to support reconsideration of Graphnet's grant, their summary repetition here provides no proper basis for the even more drastic relief RCA now seeks.

B. RCA Has Failed To Make Any Credible Showing Of Irreparable Injury In The Absence Of A Stay

9. RCA seems to assert two forms of injury to itself in the absence of a stay: (a) Because Graphnet would

---

[2] See Graphnet's "Opposition to Petition for Reconsideration," filed March 14, 1977.

be able to become [a] single source [supplier] to U.S. customers for both their domestic and their international data communications needs," RCA would be disadvantaged "in terms of its standing and capabilities in the eyes of U.S. data communications users." (Request, p. 7.)

(b) Since there is a "tendency" on the part of foreign administrations to deal with "a single or, at best, a limited number of U.S. carriers for the provision of data services," if Graphnet gets there first, RCA "may be 'frozen out' from negotiating and implementing agreements with those administrations." (Ibid.)

10. Initially, it should be emphasized that RCA has made no direct claim -- much less a factual demonstration -- that it will be financially harmed, or that its ability to provide existing services will be impaired, if a stay pending reconsideration is not granted. Instead, the two bases for asserted injury are essentially generalized fears concerning possible future events. And even those wholly unsubstantiated speculations are without substance. As to the first claimed "injury", RCA has offered no adequate explanation of its fear that Graphnet will become a "single source suppler." Moreover, even assuming that such an event were possible during the period of Commission reconsideration herein, RCA has failed to quantify the extent of its injury.

11. Indeed, RCA's own discussion of the point confirms its insubstantiality. As RCA explains it, the adverse effect it anticipates will be "in terms of [RCA's] standing and capabilities in the eyes of U.S. data communications users." (Request, p. 7.) In light of its inattentiveness to "U.S. data communications users" to date, one is given to wonder what, in fact, such users view RCA's "standing and capabilities" to be in this area. The "Emperor's clothes" analogy inevitably suggests itself. But however RCA may now be perceived, it is obvious that the concern RCA articulates here is purely public relations. The Commission is not in the business of reinforcing marketplace posturing, however, but is charged instead with attending the satisfaction of public needs for communications services.

12. RCA's second "injury" claim is as vague and unsupported as its first. To the extent there is any "tendency" of foreign administrations concerning data communications, RCA has neither explained them nor supported their existence. Moreover, even the "tendency" asserted holds no certainty of injury to RCA. If certain foreign administration "tend" to deal with only a single entity, RCA, in light of its "standing and capabilities", has a greater opportunity than Graphnet to be that entity. If

other foreign administration "tend" to deal with "a limited number of U.S. carriers", there is no reason to assume that Graphnet's presence would foreclose RCA's being among the other of those entities.

13. Fundamentally, however, RCA's claim in this regard must fail because of its wholly generalized nature. While RCA claims that it "would be irreparably injured if it were foreclosed from achieving a service arrangement with an overseas administration because of the latter's agreement with Graphnet" (Request, p. 8), its assertion is pure speculation. RCA does not identify which, or how many, foreign administrations it fears "may" be lost to it; whether its "loss" of any one will be felt more than any other; why its "loss" is more likely to be in Graphnet's favor rather than to other IRCs with which RCA now competes. Most pertinently, RCA does not quantify the extent of feared injury to itself, or the extent to which any such injury could affect its continued provision of services. Without such showings, of course, RCA's summary assertions of injury are entitled to no weight whatever.

C. RCA Has Failed To Show Graphnet Would Not Be Injured If A Stay Were Granted

14. Interpreted most charitably, RCA's contentions that Graphnet would not be "substantially" harmed are twofold:

(a) Because Graphnet does not yet have an agreement with a foreign correspondent, and since Graphnet's recent IRC interconnection agreements will effectively extend Graphnet's services overseas in any event, it will not be "adversely affected" if a stay is granted. (Request, pp. 8-9.)

(b) Public users will not be "deprived" of an "existing service" and a stay will not "in and of itself cause withholding of such services from users." (Id. at p. 8.)

With respect to the effect of a stay in communications users, that matter is discussed below at pages 13 - 16. Suffice it to say, RCA's one-sentence assertion in this portion of its petition hardly represents a persuasion showing on the subject.

15. With respect to the contentions of no injury to Graphnet, RCA's discussion concerning the nature and effect of Graphnet's intercarrier agreements with RCA and ITT Worldcom is seriously inaccurate. As RCA knows full well, those agreements do *not* contemplate the extension of Graphnet's domestic service capabilities beyond the point of interface with the IRCs at their U.S. gateway locations. Moreover, neither RCA nor any other IRC has *ever* been prepared to provide facilities or services to Graphnet for the overseas extension of its services or any economically reasonable, or technically feasible, basis. To here suggest the contrary is regrettably misleading.

16. The disingenuity of RCA's principal claim -- Graphnet would not be injured since it has not yet concluded agreements with foreign administration -- is also readily apparent. RCA has argued irreparable injury to itself, of course, because of foreign administration "tendencies" to deal "with only a single or, at best, a limited number of U.S. carriers", and because of the possibility of its being "frozen out" of future agreements with such administrations. RCA's position, it seems, depends on whose ox is being frozen. For the same potential adverse consequences RCA claims -- if they are credible at all -- are equally applicable to Graphnet. To the extent RCA's speculations concerning its own irreparable injury are entitled to any weight whatever, they likewise confirm the same potential injury to Graphnet. And there is no defensible public interest reason why, in light of RCA's existing marketplace advantages, the Commission should favor RCA with a complete isolation from any type of competitive challenge in service areas heretofore ignored by it.

D. The Public Interest Requires Denial of the Stay Requested

17. Most of RCA's discussion of this element is devoted to a reiteration of points advanced elsewhere in its pleading. The Commission is treated again to its error in not having "properly" addressed "substantial issues," and in failing to have held "the most thorough of inquiries (through an evidentiary hearing) into all the short and long-term public interest ramifications of [Graphnet's] entry." (Request, pp. 9-10.)[3/] Moreover, emphasizing once more the delicate thread by which the IRCs' economic survival appears to hang, RCA again cautions the Commission that "[a]ny market fragmentation . . . and, indeed, any unreasonable action . . . simply is not in the public interest." (Request, p. 11.)

18. These matters have been dealt with elsewhere in this pleading, and will not be repeated here. What is worth noting, however, is that the user -- the public whose

---

[3/] At one point, RCA suggests the need for a stay if "the public interest lies in a reasoned Commission decision incapable of being reversed or remanded upon appeal." (Report, p. 10.) Certain of the negative pregnants in that assertion -- that the Commission's decision is not "reasoned," and the ruling is capable of "being reversed or remanded" -- are reflected in RCA's other arguments. How a stay could make a difference, however, is not clear. Assuming RCA's intention is to "help" the Commission write an "appeal-proof" decision -- a motivation the probability of which Graphnet entertains some doubt about -- a stay is far from an essential tool. A well-written denial of reconsideration would suffice.

interest, convenience and necessity the Commission is to safeguard -- has been virtually forgotten in RCA's presentation. The most RCA offers in that regard is as follows:

> [N]o user will be deprived of the subject services and these services will not be withheld from the public by virtue of the existence of a stay alone under the circumstances. The international carriers themselves stand ready to provide service via their own facilities where feasible . . . .

(Request, p. 10.)[4/]

19. One hardly knows where to start. As to the suggestion that the IRCs can currently furnish the type of service Graphnet has been authorized to offer, RCA's position is rank nonsense. They cannot, RCA knows it, and the Commission so found. Indeed, the Commission in this case dispelled any illusions the uninformed might have had about the IRCs' "satisfaction" of users' data communications needs:

> The services presently offered by the international record carriers do not have the inherent capability to provide data transmission services for a substantial number of potential users in a cost effective manner. The existing services usable for data transmission offered by the international record carriers . . . are not cost-efficient for many users with intermittent data communications requirements.
>
> * * * *
>
> In many instances it is not feasible for a data communications user desiring

---

[4/] See also Request, p. 8:

> [N]o public user stands to be deprived of an existing service, nor will issuance of a stay in and of itself cause withholding of such service from users.

> access to an overseas terminal or computer to use the existing services of the international record carriers . . . . The use of Datel or Telex is also inefficient for many data communications users . . . . Moreover, the existing overseas data communications services generally do not in themselves make possible communications between incompatible terminals or computers. In view of the technical and economic deficiencies of existing services relative to the public need, we find that the public interest requires more and better service. . . .

20. To be sure, the IRCs "stand ready," as RCA states, and have done so for years. Indeed, it is that inertial "standing" -- the IRCs' concentration on maximizing the profitability of traditional offerings -- which was a significant factor requiring the grant of Graphnet's proposal. Indeed, even now RCA's "standing-ready-to-provide-service" assurance is circumscribed by the qualification "where feasible" -- an escape clause which has permitted the IRCs for years to offer what they, not data users, prefer.

21. Basically, RCA contends that, since Graphnet's authorized overseas services are not available today, grant of a stay will not affect users. It is true, of course, that a stay would not result in the withdrawal of service. But with every day a stay delays the initiation of Graphnet's services, that many more days will users be forced to services and facilities which, while suited to the IRCs' operations, may not be suited to users' requirements. Every day the public

is denied service options otherwise available -- every day that services such as Graphnet's, found to be needed and technically feasible, are delayed -- the public interest is injured.

Conclusion

22. The narrow question properly to be considered here is whether RCA has persuasively demonstrated the need for a stay of Graphnet's authorization pending Commission action on RCA's request for reconsideration. For the reasons set forth above, none of RCA's presentation -- viewed either in its entirety, or in its component parts -- satisfies the applicable *Virginia Petroleum Jobbers* criteria. RCA has failed to establish its likelihood of prevailing on the merits of its reconsideration request. It has failed to even offer a credible showing of irreparable injury in the absence of a stay. Its assertions of no injury to other parties are transparently insufficient. And no reason whatever has been provided why the Commission's finding of current public need for the services should be altered to suit RCA's competitive preferences. RCA's request should be summarily denied.

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

By______________________________
Edward P. Taptich

McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D. C. 20036

Its Attorneys

March 23, 1977

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20006

In Re Applications of	
GRAPHNET SYSTEMS, INCORPORATED	File Nos. I-P-C-11 I-P-C-11A
For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.	
TELENET COMMUNICATIONS CORPORATION	File No. I-T-C-2634
For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	
RCA GLOBAL COMMUNICATIONS, INC.	File No. I-T-C-2657
For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	
WESTERN UNION INTERNATIONAL, INC.	File No. I-T-C-2658
For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	

To the Commission:

COMMENTS

Western Union International, Inc. (WUI) hereby submits its Comments in the above captioned proceeding with respect to the Petition for Partial Reconsideration (Petition) filed herein by RCA Global Communications, Inc. (RCA).

1. WUI substantially agrees with the Petition of RCA and the arguments set forth therein.

2. All participants in this proceeding agree that Memorandum Opinion Order, Authorization and Certificate released January 11, 1977, (Order) involves issues which reach the very structure of the international communications industry. The Order has authorized two new entities, Graphnet Systems, Inc. (Graphnet) and Telenet Communications Corporation (Telenet), to furnish international data telecommunications services directly to various overseas points.

3. The Commission, in authorizing Graphnet and Telenet to provide such services, found that there was a need for such services which was not being met by carrier service offerings existing at the time of the Order.* The Comission also found that the services being offered by the IRCs at the time of the Order did not have the inherent capability to provide data transmission services for a substantial number of potential users in a cost effective manner.** In addition, the Commission stated that it is not feasible for a data communications user desiring access to an overseas computer to use the then existing services of the IRCs.***

4. After making the above negative findings relating to the capabilities of the IRCs, the Commission went on to conclude that Graphnet and Telenet were legally,

---

*Order, ¶4.
**Order, ¶5.
***Order, ¶7.

technically and otherwise qualified to offer their proposed services.* There is not one fact in the record to substantiate this conclusion.

5. Moreover, the Commission's Order reversed its long standing policy of requiring an applicant to provide evidence of agreement with foreign correspondents prior to obtaining approval of its proposed service offering. In refusing to enforce this requirement, the Commission stated that it might well disserve the public interest.** There is not one fact in the record relating to this conclusion.

6. Most importantly, the Commission has made sweeping assertions and assumptions as to the impact of its decision on the future of overseas data transmission services and the effect of section 222 on the competitive ability of the IRCs to provide such services.*** These fundamental issues were decided without any factual basis existing in the record on which the Commission could rest its conclusions. This deficiency is especially glaring in light of the Commission's departure from its fundamental policy, developed over the past thirty-four years, of separation of international and domestic record communications.

7. It is a basic principle of administrative law that an administrative agency must enunciate the reasons for its decisions and that those reasons must be adequately supported by the record. Public Service Commission v. FPC,

---

*Order, ¶9.
**Order, ¶13.
***Order, ¶14 and ¶15.

436 F.2d 904, 907 (D.C. Cir. 1970); Northeast Airlines, Inc. v. CAB, 331 F.2d 579, 588-89 (1st Cir. 1964). This principle is especially relevant when an administrative agency is departing from prior policy and precedent, as in the instant proceeding. In such cases, the agency must adequately explain its action. Columbia Broadcasting System, Inc. v. FCC, 454 F.2d 1018 (D.C. Cir. 1971) is illustrative of the basic principle. The Court criticized the FCC for not squarely confronting a prior precedent and for not adequately explaining how it reconciled its present decision with that precedent.

> "[A]s this court emphasized, the Commission'must explain its reasons and do more than enumerate factual differences, if any, between *** [similar] cases; it must explain the relevance of those differences to the purposes of the Federal Communications Act.'" 454 F.2d at 1026, quoting Melody Music, Inc. v. FCC, 345 F.2d 730, 733 (D.C. Cir. 1965)

> "...Face with two facially conflicting decisions, the Commission was duty bound to justify their coexistence. The Commission's utter failure to come to grips with this problem constitutes an inexcusable departure from the essential requirement of reasoned decision making." 454 F.2d at 1027.

8. The Order is replete with conclusory and unsupported generalities in violation of the above cited legal principles. The Commission's failure to hold a complete evidentiary hearing prior to acting in this matter has prevented the development of a record which would have fully and fairly

dealt with these crucial issues. The record which the Commission developed was not complete and should have been completed before it acted with finality. The parties to this proceeding, including WUI, have been afforded no opportunity to make an effective showing. Walter Holm & Co. v. Hardin, 449 F.2d 1009 (D.C. Cir. 1971).

9. The result reached by the Commission can be attributed to the Commission's failure to follow principles of administrative law which would have resulted in a complete and adequate record, capable of supporting conclusions fairly drawn therefrom. The importance of the issues involved in this proceeding required the institution of a full trial type evidentiary hearing before an administrative law judge to develop all the factual and legal implications flowing from those issues. Administrative Procedure Act, 5 U.S.C §706; Chicago v. FPC, 458 F2d 731, 744(D.C. Cir. 1971) It is submitted that such a procedure would have resulted in a reversal of the Commission's position.

10. At stake in the instant proceedings are issues of vital importance to the international telecommunications industry. Accordingly, it is inconceivable that the Commission could have attempted to decide such issues upon a record consisting of no more than broad, unsubstantiated and sharply contradictory contentions of the parties to this proceeding. No further procedures were employed by the Commission to segregate facts from assumptions and to

engage in meaningful analysis of important and difficult issues despite the commonplace use of such procedures in proceedings involving far less significant issues.

11. Furthermore, when specific and material issues of fact are raised, due process of law requires that some form of evidentiary hearing be held. *Bell Telephone Co. v. FCC*, 503 F2d 1250, 1266-68 (3rd Cir. 1974), *cert. denied Sub nom. American Telephone & Telegraph Co. v. FCC*, 422 U.S. 1026 (1975). The Commission, this case, made assumptions and uncritically accepted contentions in numerous material respects when it could have readily elicited the necessary facts. Reference is made to paragraphs 3, 4, 5 and 6 above for examples of the Commission's unsupported assumptions.

WHEREFORE, the Commission is respectfully requested to grant RCA's request for the reconsideration and setting aside of its grants of authorization to Graphnet and Telenet and is further requested to hold further proceedings including an evidentiary hearing in this proceeding, all in accordance with the considerations set forth above.

Respectfully submitted,
WESTERN UNION INTERNATIONAL, INC.

By: Marc N. Epstein
Its Attorney

One WUI Plaza
New York, New York 10004

Dated: March 24, 1977

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20006

In Re Applications of	
GRAPHNET SYSTEMS, INCORPORATED	File Nos. I-P-C-11 I-P-C-11A
For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.	
TELENET COMMUNICATIONS CORPORATION	File No. I-T-C-2634
For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	
RCA GLOBAL COMMUNICATIONS, INC.	File No. I-T-C-2657
For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	
WESTERN UNION INTERNATIONAL, INC.	File No. I-T-C-2658
For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	

To the Commission:

PETITION FOR WAIVER OF RULES

Western Union International, Inc. (WUI) hereby requests the Commission to waive, pursuant to Section 1.3 of its Rules, the provisions of Section 1.106 of its Rules, and grant WUI leave to file its comments on the petition filed by RCA Global Communications, Inc. (RCA) on February 10, 1977 for partial reconsideration of the above captioned Memorandum Opinion Order, Authorization and Certificate released January 11, 1977. (Order).

In support of this petition, WUI respectfully states as follows:

1. On January 11, 1977, the Commission released its Order in the above captioned proceeding. The Order, among other things, authorized Graphnet Systems, Inc. (Graphnet) and Telenet Communications Corporation (Telenet) to furnish international data telecommunications services directly to the various points indicated in their respective applications.

2. On February 10, 1977, RCA filed its Petition for Partial Reconsideration. Since WUI is in substantial agreement with the arguments advanced by RCA in said petition, it did not feel that the filing of comments was necessary. However, it is now apparent that the RCA petition contains ambiguous language which is subject to varying interpretations. Therefore, WUI now believes that the filing of its comments is appropriate to clarify and amplify any possible misunderstanding, and would assist the Commission in its consideration of RCA's petition.

3. More specifically, the RCA petition asked the Commission to defer implementation of the grants of authorization to Graphnet and Telenet "pending the conduct of an

appropriate inquiry into the impact that such authorizations, and others, will have upon existing carriers and carrier services in the international market." WUI interpreted this phrase to undoubtedly mean that RCA was requesting an evidentiary hearing.

4. Graphnet and Telenet requested and received extensions of time to file oppositions to the RCA petition. On March 14, 1977 Graphnet filed its opposition to the petition for partial reconsideration. Said opposition was received by WUI several days thereafter. Upon reviewing the opposition of Graphnet, it became obvious that Graphnet did not interpret the above quoted phrase of the RCA petition as requesting an evidentiary hearing. This interpretation was reinforced upon receipt of the comments of TRT Telecommunications Corporation (TRT). These comments specifically requested an evidentiary hearing. The opposition of Telenet has not yet been received by WUI.

5. WUI now desires to file comments specifically and unambiguously addressed to the need for an evidentiary hearing in this proceeding. The delay by WUI in filing its comments was unintentional. It is respectfully submitted that no party will be unduly prejudiced by the grant of the waiver sought herein. This is especially so in light of the fact that TRT has previously filed comments addressed to the issue of the need for an evidentiary hearing.

6. WUI has been involved in this proceeding since its inception, and respectfully believes that its comments are pertinent to the crucial issues involved in this proceeding.

WHEREFORE, a waiver of the Commission's Rules in accordance with the foregoing is respectfully requested.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Marc N. Epstein
Its Attorney

One WUI Plaza
New York, New York 10004

Dated: March 24, 1977

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of	
GRAPHNET SYSTEMS, INCORPORATED	File Nos. I-P-C-11 I-P-C-11A
For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.	
TELENET COMMUNICATIONS CORPORATION	File No. I-T-C-2634
For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	
RCA GLOBAL COMMUNICATIONS, INC.	File No. I-T-C-2657
For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	
WESTERN UNION INTERNATIONAL, INC.	File No. I-T-C-2658
For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	

To: The Commission

OPPOSITION TO "PETITION FOR WAIVER OF RULES"

Telenet Communications Corporation ("Telenet"), by its attorneys, hereby opposes the "Petition for Waiver of

Rules", filed herein on March 24, 1977 by Western Union International, Inc. ("WUI"),[1] stating as follows:

By its petition, WUI seeks a waiver of §1.106 of the Commission's Rules, to permit WUI to file "Comments" regarding the "Petition for Partial Reconsideration" filed herein by RCA Global Communications, Inc. ("RCA"), on February 10, 1977, which sought reconsideration of the Commission's January 11 Memorandum Opinion, Order, Authorization, and Certificate ("Order"), insofar as it granted the Graphnet and Telenet applications.

WUI concedes that it "is in substantial agreement with the arguments advanced by RCA", but it seeks to justify its instant petition, and its accompanying comments, upon an asserted ambiguity in the RCA petition, which apparently only WUI can resolve. WUI claims that it interpreted RCA's request for the Commission to "conduct . . . an appropriate inquiry into the impact that such authorizations [of Graphnet and Telenet], and others, will have upon existing carriers and carrier services in the international market", as a request for an evidentiary hearing; that Graphnet's March 14 "Opposition" first alerted WUI to the possibility that others might not reach such an interpretation; but that comments filed by TRT Telecommunications Corporation did reach such an interpretation. WUI states that it "now desires to file comments specifically and unambiguously addressed to the need for an evidentiary hearing in this proceeding."

---

[1] Once again, Telenet wishes to express its concern at the failure (or refusal) of WUI to serve Telenet's counsel, who has been of record throughout the proceedings leading up to the January 11 Order, and whose first knowledge of the WUI "Petition . . ." and "Comments" came from a trade publication. See Section 1.47 of the Commission's Rules.

So viewed, it is clear that what WUI seeks is beyond the power of the Commission to grant. Section 405 of the Communications Act requires that petitions for reconsideration of final Commission actions be filed within thirty days of such actions, and the Commission has no authority to waive a requirement of the Act, except in unique circumstances not present here; see Gardner v. FCC, 530 F2d 1086 (U.S. App. D.C., 1976).

WUI in reality seeks reconsideration of the Commission's January 11 Order granting the Graphnet and Telenet applications. Its opportunity to seek such reconsideration expired on February 10, and thus its March 24 petition and the accompanying comments are six weeks late.[2/]

Even were WUI's "Comments" to be construed as something other than an untimely petition for reconsideration, it has shown absolutely no basis for having waited until ten days after the extended period for filing oppositions to the RCA petition before first presenting its arguments. Its claim that its delay was "unintentional" falls far short of

---

[2/] See Burlington Broadcasting Co., 35 FCC 456 (1963), where the Commission stated (at 458):

> "Although Burlington Broadcasting Co. has captioned its pleading as a statement of position it is in reality a petition for reconsideration for it asks the Commission to reconsider its decision in whole and, upon such reconsideration, to conclude that Farina is not qualified to be a licensee . . . Since the statement of position must be considered as a petition for reconsideration, and because it was not filed until [six weeks after the Commission's decision], it will be stricken as an untimely filed petition for reconsideration"

meeting any standard of diligence: WUI was a party to the proceedings giving rise to the January 11 *Order*, and, as the recipient of a grant therein, surely had actual as well as constructive notice of the *Order*.

WUI's assertion that "no party will be *unduly* prejudiced" (emphasis added) is an admission that some parties *will* be prejudiced, but that in WUI's opinion, such prejudice is outweighed by the need to permit WUI to plead on its own unique timetable. WUI's attempt to ride the coattails of the TRT comments if futile, for TRT's filing, just as WUI's - is a grossly untimely petition for reconsideration.[3]

For the foregoing reasons, it is respectfully urged that the WUI Petition be denied.

Respectfully submitted,

TELENET COMMUNICATIONS CORPORATION

By: Philip M Walker
Philip M. Walker
Vice President and General Counsel
Telenet Communications Corporation
1050-17th Street, N.W., Suite 850
Washington, D.C. 20036

By: Donald E. Ward
Donald E. Ward
Law Offices of Donald E. Ward
1050 -17th Street, N.W., Suite 840
Washington, D.C. 20036

April 1, 1977

Its Attorneys

---

[3] Telenet is contemporaneously moving to strike the TRT comments on these grounds.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 4 1977

In Re Applications of

GRAPHNET SYSTEMS, INCORPORATED) File Nos. I-P-C-11
I-P-C-11A

For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.

JSJ
JSL
TJF
JAL
TM
TC
ML
RJH

TELENET COMMUNICATIONS CORPORATION) File No. I-T-C-2634

For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.

RCA GLOBAL COMMUNICATIONS, INC.) File No. I-T-C-2657

For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).

WESTERN UNION INTERNATIONAL, INC.) File No. I-T-C-2658

For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.

To: The Commission

MOTION TO STRIKE

Telenet Communications Corporation ("Telenet"), by its attorneys, hereby moves to strike the "Comments on Petition for Partial Reconsideration" filed herein by TRT

Telecommunications Corporation ("TRT") on March 14, 1977. In support thereof, it states as follows:

TRT's "Comments" represent no more than an untimely petition for reconsideration of a Commission Order released more than sixty days earlier. Section 405 of the Communications Act requires that such petitions be filed within thirty days of the release of the Decision or Order to which they relate.[1] TRT clearly seeks Commission reconsideration and reversal as to the Graphnet and Telenet grants, and thus its "Comments" must be dismissed as an untimely petition for reconsideration.

In Burlington Broadcasting Co., 35 FCC 456 (1963), the Commission pertinently stated (at 458):

> "Although Burlington Broadcasting Co. has captioned its pleading as a statement of position it is in reality a petition for reconsideration for it asks the Commission to reconsider its decision in whole and, upon such reconsideration, to conclude that Farina is not qualified to be a licensee . . . Since the statement of position must be considered as a petition for reconsideration, and because it was not filed until [six weeks following the decision complained of] it will be stricken as an untimely filed petition for reconsideration."

---

[1] See Telenet's Opposition to Western Union International's "Petition for Waiver of Rules" filed contemporaneously herewith.

TRT's "Comments must be similarly stricken.

Respectfully submitted,

TELENET COMMUNICATIONS CORPORATION

By:
Philip M. Walker
Vice President and General Counsel
1050-17th Street, N.W., Suite 850
Washington, D.C. 20036

By:
Donald E. Ward
Law Offices of Donald E. Ward
1050-17th Street, N.W., Suite 840
Washington, D.C. 20036

April 1, 1977

Its Attorneys

APR 4 1977
JJJ
JBL
TJF
JAL
TM
TC
MS
RJH

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of

GRAPHNET SYSTEMS, INCORPORATED — File Nos. I-P-C-11, I-P-C-11A

For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.

TELENET COMMUNICATIONS CORPORATION — File No. I-T-C-2634

For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.

RCA GLOBAL COMMUNICATIONS, INC. — File No. I-T-C-2657

For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).

WESTERN UNION INTERNATIONAL, INC. — File No. I-T-C-2658

For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.

To the Commission:

REPLY

RCA Global Communications, Inc. (RCA Glōbcom), hereby replies to the oppositions filed herein by Graphnet Systems, Inc. (Graphnet) and Telenet Communications Corporation (Telenet), in response to RCA Glōbcom's

"Petition for Partial Reconsideration".*

In such "Petition", RCA Glōbcom asserted that grants of authorization to Graphnet and Telenet to extend their domestic data communications services to overseas points** were predicated upon a defective rationale, were made without due consideration of substantial public interest issues, and were accomplished without any reasoned analysis of the competitive consequences they would bring to bear upon the international market.

Predictably, Graphnet and Telenet defend the Commission's Order and the authorizations granted them therein. Significant, however, is Telenet's candid concession that "...RCA's Petition has served to highlight several areas in which the Commission's Order might have been made more explicit...."*** That the Order is lacking thus is admitted by Telenet and, we submit, the nature and extent of its shortcomings fully warrant issuance of a stay by the Commission insofar as Graphnet's and Telenet's authorizations are concerned,**** and grant of the reconsideration requested herein.

---

* TRT Telecommunications, Inc., has filed "Comments" essentially supporting our position.

** Memorandum Opinion, Order, Authorization and Certificate, FCC 77-2, released January 11, 1977 (hereinafter "Order").

*** Telenet "Opposition", at 22. This contrasts with Graphnet's contention that "[t]he Commission's consideration of both [its] application and the related pleadings was complete and reflective...." Graphnet "Opposition" at 6.

**** On March 11, 1977, RCA Glōbcom formally requested that the Commission stay the Graphnet and Telenet authorizations.

Prior to addressing these oppositions, it is extremely important, we believe, to examine briefly each of the two proposed international market entrants and to distinguish between the services each proposes to furnish. It simply is incorrect to view Graphnet and Telenet, two so-called value-added carriers, as "similar" even though "packet-switching technology" purportedly serves as a common technological bond between them. Telenet, we believe, proposes a packet-switched service intended to provide data processors with communications capability between or among computers and computer terminals tied to its network. Graphnet on the other hand, its representations notwithstanding,* proposes to provide message telegram service. No matter how its technology may differ from that currently utilized by The Western Union Telegraph Company, Graphnet furnishes merely an alternative to Western Union telegram service, as an examination of its pertinent tariff clearly will reveal. Thus, it is erroneous to view Graphnet as intending to furnish the type of data service called to mind by the concept of "packet-switching" and anticipated by the Commission in the subject Order. Under the circumstances, RCA Glōbcom's concerns with respect to its continued ability to furnish its authorized public services require due consideration, not only in terms of the more sophisticated segment of the international data market, but also in terms of the international telegram market which Graphnet is seeking to enter.*

---

* In numerous pleadings which are a matter of record before the Commission, The Western Union Telegraph Company has attempted to demonstrate that Graphnet service is telegram service, no matter by what name called.

With regard specifically to matters raised in the Graphnet opposition, we note that in several aspects Graphnet, rather than addressing in substance the significant issues we have raised in prior pleadings and in the subject Petition, has elected to assert without justification that we have indulged in generalities and have been "long on broadsides".** At best, such contentions reveal a misunderstanding of our position. Telenet essentially utilizes its opposition pleading as a vehicle not to address directly the competitive factors which we have raised but, rather, to decry what it somehow perceives as undue Commission delay in acting upon its own Application.***

Thus, neither Graphnet nor Telenet address the essence of RCA Glōbcom's reconsideration request, that is, the impact that their authorizations, if implemented, will have upon the ability of RCA Glōbcom to continue to furnish its public services in view of the competitive restrictions applicable to RCA Glōbcom, which restrictions simply would not apply to Graphnet and Telenet. With regard to Graphnet's claim that RCA Glōbcom has provided "no facts or explanations" as to the competitive disadvantage the latter would suffer if domestic carriers like Graphnet were permitted to implement overseas service (Opposition at 8), we are somewhat at a loss to understand precisely what further Graphnet would require of us. We delineated our concerns within our pleadings addressing both the Graphnet and Telenet applications, treated together by the Commission and, further, we addressed same within our reconsideration request. We believe Graphnet and Telenet appreciate fully our concerns and, we submit, the Commission has an obligation to address these to a substantially greater and more reasoned extent than it did in its Order. In this regard, Graphnet's claim that "the Commission's decision treated the matter at length" (Graphnet Opposition, at 10), and Telenet's assertion that the matter "was fully dealt with" (Telenet Opposition, at 19), simply is not supported by even the most liberal construction of paragraphs 14 and 15 of the Commission's Order.

---

* We simply do not believe that additional competition is "reasonably feasible" in this market segment, and we anticipate that our 1976 Revenue and Cost Study, now under preparation for submission in Docket FCC No. 20778, will further support our belief.

** Graphnet Opposition, at 9.

*** Its position here is betrayed by its admission that, as of March 14, 1977, it "has no formal operating agreement with the British Post Office, although it continues to believe that such an agreement for direct interconnection is feasible in the future". Telenet Opposition, at 3, n.1 Accordingly, the timing of Commission action upon its application has been of no particular consequence.

There are several other respects in which the subject oppositions, particularly Graphnet's, mischaracterize RCA Glōbcom's position as set forth in earlier responsive pleadings and in its Petition. It would serve no useful purpose, however, to recount these herein as the record pleadings speak for themselves. In any event, our election not to address further the Graphnet and Telenet oppositions should not be viewed as an admission by RCA Glōbcom as to the allegations contained therein.

One additional matter does merit our attention and comment at this time. As in its earlier opposition, dated August 10, 1976, Graphnet again accuses the IRCs of "controlling" overseas correspondents, their philosophies and their actions and reactions.* Such accusation is unfounded.

Conclusion

For all the reasons set forth in RCA Globcom's "Petition for Partial Reconsideration" and hereinabove, the Commission should set aside its grants of authorization to Graphnet and Telenet and conduct an appropriate inquiry into the impact that such authorizations, if implemented in the fashion determined by the Commission in its January 11 Order, will have upon the present and future ability of existing carriers to provide their services in the international market.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

Francis J. DeRosa

Donald J. Elardo

Its Attorneys
60 Broad Street
New York, New York 10004
Tel. (212) 363-2301

April 1, 1977

---

* In its Opposition at n.7, Graphnet refers to "the IRC's earlier success in marshalling foreign correspondents'" opinions against the Commission's June 30, 1976 Resale Decision. This clearly constitutes an unwarranted attack upon the integrity and independence of overseas administrations.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In Re Applications of

GRAPHNET SYSTEMS, INCORPORATED — File Nos. I-P-C-11, I-P-C-11A

For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.

TELENET COMMUNICATIONS CORPORATION — File No. I-T-C-2634

For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.

RCA GLOBAL COMMUNICATIONS, INC. — File No. I-T-C-2657

For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).

WESTERN UNION INTERNATIONAL, INC. — File No. I-T-C-2658

For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.

To the Commission:

REPLY

RCA Global Communications, Inc. (RCA Glōbcom), hereby replies to the oppositions filed by Graphnet Systems, Inc. (Graphnet) and Telenet Communications Corporation (Telenet) in response to RCA Glōbcom's "Request for Partial Stay". The latter was submitted subsequent to and in connection with RCA Glōbcom's request to the Commission to grant partial reconsideration of its Memorandum Opinion, Order, Authorization and Certificate, FCC-77-2, released January 11, 1977 (Order) to the extent Graphnet and Telenet were authorized to furnish international data telecommunications services directly to certain overseas points. In its "Petition for Partial Reconsideration" and a "Reply" to oppositions thereto filed by Graphnet and Telenet, and in the "Request for Partial Stay", which is the subject of this Reply, RCA Glōbcom delineated reasons fully warranting Commission reconsideration of its authorization grants and the issuance of the stay requested herein. These will not be recounted here. Rather, we shall limit our Reply solely to certain matters raised by Graphnet and Telenet in their stay oppositions. Our refusal to address any particular point or points raised by Graphnet or Telenet should not be construed as any admission on our part.

Graphnet Opposition

Graphnet indicates that one of the bases stated by RCA Glōbcom to support issuance of a stay, i.e., the need to establish new procedures to be applied when or if Graphnet obtains an operating agreement with a foreign administration and thereafter seeks to implement an overseas service, is not adequately supported (pp. 3-4). Until the Commission's recent departure from prior practice, such agreements have been a required element in any Section 214 application and, accordingly, interested parties had an opportunity to review and comment upon same when addressing the

Section 214 application. Obviously, this was not the case here as no agreements existed and thus could not be a part of the Section 214 application. RCA Glōbcom submits that such agreements, if ever obtained under the Commission's "new" approach, must be subject to scrutiny and comment by interested parties.

Graphnet asserts that the fact that ITT World Communications, Inc. (ITT Worldcom) has petitioned for judicial review is no basis for RCA Glōbcom to request a stay (p. 4). We disagree. The bases upon which ITT Worldcom has requested judicial review are in their essence, we believe, the very same reasons RCA Glōbcom has requested partial reconsideration of the challenged Order, and a Stay in respect thereof. As we have no reason to believe ITT Worldcom will not prosecute its appeal in the event that reconsideration may be denied in whole or in part, we believe that its pending court action is an appropriate basis upon which to request the issuance of a stay at this time.

Graphnet appears to allege that RCA Glōbcom's attempt to meet the initial element in satisfying the legal requirement for issuance of a stay, i.e., "the likelihood of prevailing on the merits" on any appeal that might be taken, is misplaced because it looks beyond the pending RCA Glōbcom reconsideration request and addresses potential judicial action (pp. 5-6). While no extensive comment is required on this point, it is obvious that RCA Glōbcom has attempted to satisfy (and indeed, it has satisfied) the precedent followed by the courts and the Commission in granting a stay in any instance.

Graphnet places undue emphasis on a need to show financial harm in order to support any request for stay. While demonstrable financial harm to varying degrees is an element used to support a request of stay, it generally is recognized as an insufficient basis upon which to establish a claim for irreparable damage. Accordingly, as any reading of RCA Glōbcom's post-grant pleadings herein will indicate, RCA Glōbcom has demonstrated that the irreparable damage it will suffer results from the competitive disadvantage it would realize if Graphnet and Telenet were permitted to implement their authorizations. Money damages in this regard admittedly are difficult to quantify. However, they are reasonably foreseeable occurrences in view of the manner in which the Commission would restructure the international market by awarding to Graphnet and Telenet preferences not provided to existing international carriers, including RCA Glōbcom.

In this regard, it is apparent that Graphnet and Telenet would be permitted to furnish directly international data service from all of the U.S. cities in which they currently (and prospectively will) operate, while RCA Glōbcom remains restricted to service provision within only its five gateway city locations. The obvious consequence of this arrangement is that Graphnet and Telenet would have the capability to furnish to U.S. customers both domestic and international service. Unlike Graphnet and Telenet, RCA Glōbcom would be incapable of becoming a "single source supplier" of such services. Accordingly, the customer utilizing RCA Glōbcom for international data service of necessity would need to utilize another carrier to satisfy its domestic data communications needs, but a customer who would utilize Graphnet or Telenet would not require the presence of another carrier or carriers. We submit that such a development would place us at an obvious competitive disadvantage vis-a-vis Graphnet and Telenet. It cannot be overemphasized that these two carriers have never addressed this matter within their pleadings.

Telenet Opposition

For the most part, Telenet's opposition merits little attention. Except to note that Telenet appears to assail the Commission's capability to conduct properly an evidentiary hearing where one is required*, and that it states that it was RCA Glōbcom's obligation to petition the Commission to institute an evidentiary hearing concerning issues associated with the market entry of two new carriers in the international field** (and not the Commission's obligation itself to institute such inquiry pursuant to Section 214 of the Communications Act), we shall not, except as set forth immediately below, address its contentions.

We are compelled to place in proper perspective Telenet's wholly unwarranted charge that our reference generally to existing (and known) interconnection agreements between Graphnet and Telenet and various international carriers for the purpose of extending the formers' domestic services to overseas points is "in direct violation" of a provision of the interconnect agreement between Telenet and RCA Glōbcom

---

* Telenet views issuance of a stay pending the conduct of an evidentiary hearing as amounting to a stay "virtually in perpetuity". Telenet Opposition, at 3.

** Telenet Opposition, at 3.

(on file with the Commission), "is grossly inappropriate" and was done in "bad faith". First, and obviously, such allegation is irrelevant to the questions at issue herein. Second, and more importantly, Telenet unfortunately has found it necessary to quote only a portion of the referenced contract provision, thereby taking out of context the statement upon which it bases its allegation.* Had it not improperly quoted out of context, of course, there would have been no basis whatsoever upon which [illegible] rest its irrelevant charge.** It is obvious from an examination of the contractual provision in its entirety that RCA Glōbcom's general reference to existing and known interconnect agreements between domestic and international carriers was entirely proper***, particularly in view of the fact that the Commission fully endorsed this approach as a means by which, it believes, RCA Globcom, for example, could overcome competitive disadvantages that will result from any implementation by Graphnet and Telenet of their international authorizations.

---

* In its entirety, the provision reads, as follows: "Without prejudice to any arguments which may be advanced by either RCA Glōbcom or Telenet with respect to market structure, feasibility of competition or any other public interest factors, neither party shall advance the fact that service is to be provided or is being provided by RCA Glōbcom and Telenet pursuant to this Agreement as a reason for denial by the Commission of any application filed by either RCA Glōbcom or Telenet to provide the service contemplated herein, either individually or in association with another entity". Telenet has failed to incude in its quotation that which is underscored above.

** It is interesting to note that it was RCA Glōbcom which had insisted during negotiations that the pertinent contractual language omitted by Telenet be inserted to qualify any commitment to "remain silent" where overriding public interest factors were present.

*** Even had RCA Glōbcom pointed to the specific agreement it had effectuated with Telenet, such would have been proper and, in any event, the general reference to recent contractual undertakings between Graphnet and Telenet and international carriers was accomplished within the context of RCA Glōbcom's stay request of an authorization already made, and not "as a reason for denial by the Commission of any application filed by ... Telenet...."

WHEREFORE, in view of the foregoing and that which is set forth in RCA Globcom "Petition for Partial Stay", the Commission is respectfully requested to issue a stay pending (1) the initiation and conclusion of an inquiry by the Commission into the effect that these authorizations and others, if implemented, will have upon existing U.S. competitors, their service offerings within the international market place, and charges required to be paid by the public; (2) the conclusion of further Commission and court proceedings in which the grants of the subject authorizations are being challenged; and (3) ultimate approval by the Commission (after consideration of comments to be filed by interested parties pursuant to appropriate notice procedures to be implemented by the Commission) of operating agreements these carriers may reach with overseas telecommunications administrations. Such stay should remain in effect until all of the foregoing events take place.

Respectfully submitted,

RCA GLOBAL COMMUNICATIONS, INC.

Francis J. DeRosa

Donald J. Elardo

April 4, 1977

Its Attorneys
60 Broad Street
New York, N.Y. 10004
(212) 363-2301

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In re Applications of

GRAPHNET SYSTEMS, INCORPORATED For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.	File Nos. I-P-C-11 I-P-C-11A
TELENET COMMUNICATIONS CORPORATION For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	File No. I-T-C-2634
RCA GLOBAL COMMUNICATIONS, INC. For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	File No. I-T-C-2657
WESTERN UNION INTERNATIONAL, INC. For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	File No. I-T-C-2658

To the Commission:

OPPOSITION AND MOTION TO STRIKE OF GRAPHNET SYSTEMS, INC.

On February 10, 1977, a "Petition for Partial Reconsideration" was filed herein by RCA Global Communications, Inc. (hereinafter "RCA"). Thereafter, on March 14, 1977, TRT Telecommunications Corporation (hereinafter "TRT") filed a pleading entitled "Comments on

Petition for Partial Reconsideration." And on March 24, 1977, Western Union International, Inc. (hereinafter "WUI") likewise filed "Comments," accompanied by a "Petition for Waiver of Rules," requesting a waiver of Section 1.106 of the Commission's Rules. Graphnet Systems, Inc. (hereinafter "Graphnet"), by its attorneys, hereby requests (a) that the WUI waiver petition be denied, and (b) that the "comments" filed by TRT and WUI be stricken as untimely petitions for reconsideration.

INTRODUCTION AND SUMMARY

By Memorandum Opinion, Order, Authorization and Certificate herein released January 11, 1977 (FCC 77-2) (hereinafter "Decision"), the Commission, among other things, granted an application by Graphnet to provide certain record communications services between the United States and eleven Western European nations. All four major United States international record carriers had opposed Graphnet's proposal.[1] At the time, WUI and TRT had argued primarily that the absence of agreements between Graphnet and the relevant European telecommunications authorities constituted a fatal flaw in the application -- one which required its summary dismissal by the Commission.[2]

---

[1] The Graphnet application was filed on February 18, 1976 and placed on public notice June 10, 1976. Comments and oppositions were received from RCA, WUI, TRT and ITT World Communications, Inc., July 12, 1976.

[2] Comments of TRT Telecommunications Corp., File No. I-P-C-11, 11A, July 12, 1976; WUI, Petition to Deny, File No. I-P-C-11, 11A, July 12, 1976. WUI also repeated assertions made in its opposition to Graphnet's application to serve Hawaii, File No. W-P-C-721.

After considering the various IRC oppositions and Graphnet's reply, however, the Commission granted the Graphnet application, subject to later submission and approval of operating agreements with European correspondents. Decision, ¶28. Significantly, the Commission found "a fast growing need for overseas data communications services" which "is not presently being met by existing carrier service offerings." Id. at ¶4. Grant of the Graphnet proposal, the Commission concluded, "would extend the benefits of [Graphnet's] capability and expertise into the competitive international environment and make available to the public the benefits inherent in [the] service offerings." Id. at ¶9.

On February 10, 1977, RCA filed a timely petition for reconsideration--one to which Graphnet responded on March 14, 1977. In the subject pleadings, TRT and WUI purport to "comment" on the RCA reconsideration request. In point of fact, however, the pleadings represent untimely requests for reconsideration, as WUI's petition for waiver of Section 1.106 of the Rules effectively concedes.[1]

In Graphnet's view, the WUI Petition and both "comments" must be rejected out-of-hand, since Section 405 of the Communications

---

[1] Section 1.106 of the Commission's Rules requires petitions for reconsideration to be filed within 30 days of the release of the decision complained of. In setting this filing period, Section 1.106 reiterates the requirements of Section 405 of the Act.

Act allows requests for reconsideration only if filed within 30 days of release of the Commission's Decision.[1] The Commission has ruled squarely that it cannot waive or extend the statutory deadline even if repeated in a Commission rule or regulation.[2] And, neither WUI or TRT has made any showing why those statutory and decisional requirements are inapplicable here.

The WUI and TRT Comments Are Untimely Requests for Reconsideration, And Should Be Rejected Out-Of-Hand

As noted above, both the WUI and TRT pleadings are styled "Comments" on the RCA Petition for Partial Reconsideration, but each pleading actually requests reconsideration of the January Decision on the basis of arguments fully asserted therein. The TRT Comments, for example, referred to RCA's petition only in opening and closing, both references being pro forma acknowledgements of RCA's timeliness, rather than integral parts of TRT's or RCA's arguments.[3] In the main, TRT addresses itself directly to the Decision and its asserted failings. Thus, TRT argues:

---

[1] The statute clearly states that "a petition for rehearing must be filed within thirty days from the date upon which public notice is given of the order, decision, report or action complained of." 47 U.S.C. §405 (1970) (emphasis added).

[2] Wilton E. Hall, 11 F.C.C. 1207 (1947); Neighborly Broadcasting Co., Inc., 3 R.R. 2d 743 (1964); Buckley Broadcasting Inc., 57 F.C.C. 2d 57 (1975).

[3] TRT Comments, pp. 2, 5. The opening reference stated that TRT "agrees with RCA" as to the failure of the Commission's Decision, and the closing reference "supports RCA's request" to have the Graphnet grant set aside. The substance of the RCA Petition was not addressed.

> In its instant Order, the Commission gives only passing reference to this fundamental policy governing the provision of record communications for the past thirty-four years, and departs from that policy without any investigation. . . . [w]e submit that the Commission, prior to acting on these applications, was obligated to provide the parties with an opportunity for the most searching hearing procedures to scrutinize the full implications of the policy change sought by Graphnet and Telenet.

(TRT Comments at 3, 4.) In this plain and open attack on the Commission's Decision, the TRT pleading can only be considered an independent request to "reconsider and set aside" the Graphnet authorization (id. at 5), rather than an unsolicited amplification of the RCA petition.

Similarly, the WUI Comments, as conceded in its waiver petition, are also plainly a request for reconsideration of the grant of authority to Graphnet in the absence of evidentiary hearings. Although the Comments begin by agreeing substantially with the RCA petition, WUI moves immediately to argue a point which it obviously feels RCA had not covered adequately. WUI protests the Commission's findings as to the qualifications of Graphnet and the public benefits of new international carriers, and challenges the Commission's wisdom in granting authorizations prior to receipt of operating agreements with foreign administrations. WUI Comments at 2, 3. Asserting that these "fundamental issues were decided without any factual basis existing in the record," the carrier argues that the failure to hold evidentiary hearings on such "fundamental issues" requires at least reversal of the January Decision. Id. at 3, 6.

In so attacking the Commission's Decision at this belated hour, the WUI and TRT "Comments" demonstrate the wisdom of the statute's requirement for timely requests for reconsideration. In agency proceedings where "interested parties" may participate as fully as they desire, there must be an end to delay tactics, fruitless opposition and competitively based appeals for agency action. Section 405 of the Communications Act sets a limit of 30 days for filing petitions for reconsideration, after which no belated challenge will be tolerated.[1]

From the earliest days of its practice, moreover, the Commission has taken the position that it cannot waive or ignore the statutory filing period to entertain tardy petitions for reconsideration. In Wilton E. Hall, 11 F.C.C. 1207 (1947), the Commission reviewed the statute and determined that its 30-day filing period for petitions for rehearing is mandatory rather than discretionary. In view of the requirements of Section 405, it was stated:

> It seems clear that the Commission does not have the power to extend the statutory limitation of 20 [now 30] days on the filing

---

[1] Section 405 had also been amended previously "to expedite the rehearing process and prevent it from being used as a delaying action. . . ." Senate Report No. 44, 82d Cong., 1st Sess. (1951) on S. 658 which became the 1952 Amendments to the Communications Act.

> of petitions for rehearing or reconsideration in broadcast cases by waiving a rule which merely reiterates that limitation. 11 F.C.C. at 1208. (Emphasis added).

The same result has been reached in countless cases presenting all manner of excuses for late petitions.[1]

The Courts have adopted an analogous position interpreting the statutory period for filing petitions for review. MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1976); Panhandle Eastern Pipeline Co. v. FPC, 343 F.2d 905 (8th Cir. 1965). The Courts have also recognized that the 30-day period for rehearing in the regulatory statutes is mandatory and not discretionary. Dayton Power & Light Co. v. FPC, 251 F.2d 875 (D.C. Cir. 1957); Lewis-Hall Iron Works v. Blair, 23 F.2d 972 (Custom Ap. 1928).

As a Matter of Substance, Neither Pleading Presents a Persuasive Ground for Reconsideration

In light of the foregoing, Commission consideration of either the TRT or the WUI comments would be entirely inappropriate. And to that extent, Graphnet will not here address the sbustance of those comments at length. It should be noted, however, that the fundamental complaint voiced by TRT and WUI is a disagreement with the Commission's policy judgment that international customers should have the opportunity to use Graphnet's services.[1] In part, the arguments are repetitious of those pressed by RCA, to which Graphnet has already responded.[2]

---

[1] See, e.g., King-Trendle Broadcasting Corp. 13 F.C.C. 81 (1948) (petitioner relied on informal FCC practice of notifying parties by mail instead of counting period from the formal public notice); Raymac, Inc., 14 R.R. 105 (1956) (petitioner requested reconsideration of an initial decision or late intervention in the case, because the case developed differently from its expectation); Metromedia, Inc., 59 F.C.C. 2d 1189 (1976) (petitioner was delayed in receiving a copy of the FCC decision); Albert D. Maizels, 20 F.C.C. 2d 329 (1969) (petitioner relied on an extension of the filing period by the Chief of the Broadcast Bureau).

To the extent the arguments offered differ, they are no more persuasive. First, although both the TRT and WUI pleadings call for evidentiary hearings on the "fundamental issues" said to be involved, neither presents any factual dispute which could be aired in a hearing. Second, neither pleading asserts or disputes any specific fact about Graphnet, Graphnet's operations or its proposed service which a hearing might usefully explore. Finally, neither pleading presents any matter which was not or could not have been raised in the pleadings opposing or supporting the Graphnet application.

The Commission and judicial precedents are clear that a hearing is not required to ventilate policy positions or generalized fears. To justify the time and expense of a hearing, the issues must be such that sworn testimony and cross-examination will be useful and appropriate, i.e., in matters where specific facts are in dispute.

---

[1] This policy judgment is called the "very fundamental policy issue" by TRT and the "fundamental policy . . . of separation of international and domestic record communications" by WUI. (TRT Comments, p.2, WUI Comments, p. 3) (emphasis added).

[2] See Graphnet's Opposition to Petition for Partial Reconsideration, pp. 13-16, 21-25.

As the Court said in Municipal Light Boards of Wakefield and Reading, Mass. v. FPC, 450 F.2d 1341, 1345 (D.C. Cir. 1971):

> The general thrust of the Administrative Procedure Act is the requirement of a proceeding for the presentation of conflicting contentions for resolution by the agency. There are occasions when an agency may dispose of a controversy on the pleadings without an evidentiary hearing when the opposing presentations reveal that no dispute of fact is involved, but only a question of law or administrative policy of such a nature that there is netiehr a dispute as to material facts nor a need to ventilate the underlying facts to aid in policy determination. [Footnote omitted]. 1/

Neither TRT nor WUI have shown that any such process is required here.

CONCLUSION

In view of the stricutures of Section 405 of the Act, and the patent infirmities of the WUI and TRT pleadings, Graphnet respectfully requests the Commission to deny WUI's waiver petition, and to dismiss the Comments as untimely filed reconsideration requets. If for any reason the Commission should determine to accept and consider the Comments nonetheless, Graphnet hereby requests a period of 10 days in which to respond fully to WUI's and TRT's arguments.

1/ See also, Press Wireless, Inc., 25 F.C.C. 1466 (1958), aff'd per curiam, 264 F.2d 372 (1959).

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

By ______________________________
Edward P. Taptich

By ______________________________
Virginia S. Carson

McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Its Attorneys

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20006

In Re Applications of	
GRAPHNET SYSTEMS, INCORPORATED	File Nos. I-P-C-11 I-P-C-11A
For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.	
TELENET COMMUNICATIONS CORPORATION	File No. I-T-C-2634
For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	
RCA GLOBAL COMMUNICATIONS, INC.	File No. I-T-C-2657
For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	
WESTERN UNION INTERNATIONAL, INC.	File No. I-T-C-2658
For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	

To the Commission:

REPLY OF WESTERN UNION INTERNATIONAL, INC.

Western Union International, Inc. (WUI) hereby replies to the "Opposition to 'Petition for Waiver of Rules'" of Telenet Communications Corporation (Telenet) and to the "Opposition and Motion to Strike of Graphnet Systems, Inc." (Graphnet) filed herein.

1. WUI's Petition for Waiver of Rules was accompanied by its Comments on RCA's Petition for Partial Reconsideration filed on February 10, 1977. WUI's Comments were simply and explicitly addressed to one issue: the Commission's failure to hold an evidentiary hearing prior to issuing its Order on January 11, 1977. As previously stated in its Comments, WUI respectfully believes that this proceeding involves a Commission departure from past policy in a crucial regulatory area. Thus, the absence of an adequate evidentiary record on which to base the Commission's decision is violative of fundamental and well settled legal principles.*

2. Both the Graphnet and Telenet pleadings are primarily devoted to procedural obfuscation. They attempt to block Commission consideration of the issue raised by WUI's Comments by unilaterally determining that said Comments are, in reality, a Petition for Reconsideration and, therefore, statutorily barred from being considered by Section 405 of the Communications Act. This approach would deem all pleadings not in opposition to a Petition for Reconsideration as being the same as a Petition for Reconsideration and, therefore, barred unless filed within the statutory thirty days. Since most Petitions for Reconsideration are filed on or close to the 30th day, the essential result of this position is that no party may file a pleading in support or partially in support of a Petition for Reconsideration. Said views find

---

*WUI Comments, at pp. 3-6.

no support in the Communications Act, the Commission's Rules, or in prior Commission procedure. To the contrary, the Commission has historically treated Comments in support of a Petition for Reconsideration as procedurally equivalent to an Opposition. The Commission recognizes that the public interest is best served by having all parties to a proceeding submit their views for consideration. Therefore, WUI's Comments are filed in accordance with §1.106 of the Commission's Rules, and the Commission has the authority to accept a late filing pursuant to §1.3 of its Rules.

3. The Commission has specifically recognized that interested parties may file Comments in Commission proceedings, and has set forth the standards applicable to its accepting late filed Comments:

> "When an interested party wishes to file Comments in a proceeding before the Commission but has a legitimate reason for not being able to do so within the time specified, one of two procedures may be followed. Preferably the party may file in advance of the deadline a motion requesting an extension of time for filing; good cause for same being shown, such an extension will be granted. ... Alternatively, where a party finds itself with insufficient time even to file such a motion for extension of time, it is customary to file a motion for acceptance of a late-filed pleading, again showing good cause why timely filing was not possible." El Paso Cablevision, Inc., 57 FCC 2d 95, 96 (1975)

WUI's Petition for Waiver is in compliance with the standards set forth above.

4. Telenet asserts that the waiver requested by WUI should be denied because some parties will be prejudiced. Neither the identity of such parties nor the nature of the prejudice are disclosed. Not one fact is advanced by either Telenet or Graphnet to support their attacks on WUI's Petition for Waiver.

5. In fact, the short delay in the filing of WUI's Comments has not been prejudicial to any of the parties to this proceeding.* For example, the opposition of Graphnet states: "In part, the arguments are repetitious of those pressed by RCA, to which Graphnet has already responded."** Moreover, Graphnet's opposition to RCA's Petition for Partial Reconsideration addressed itself to the hearing issue: "In sum, the Commission has not denied any party an opportunity to be heard on the question of impact (or any other matter)."*** In addition this issue was raised by TRT Telecommunications Corporation (TRT) in its Comments filed on March 14, 1977.

6. Even if one assumes, arguendo, that WUI's Comments deal with "new matters", Telenet and Graphnet fail to show how the consideration of the "new matters" will delay the Commission's consideration of the issues in this

---

*It is interesting to note that the "Opposition and Motion to Strike of Graphnet Systems, Inc." was not filed in a timely fashion.

**Graphnet Opposition to Petition for Partial Reconsideration dated March 18, 1977, at p. 15.

***Graphnet Opposition and Motion to Strike, at p. 8.

proceeding. Thus, the Motion to Strike should be denied. See KSD/KSD-TV, Inc., 61 FCC 2d 504, 505 (1976).

7. There are times when silence speaks more eloquently than a torrent of words. Telenet's opposition mutely ignores the issue raised by WUI's Comments. Not one word of said opposition is addressed to WUI's call for an evidentiary hearing. Not one word of said opposition denies WUI's well documented contention that the failure to hold an evidentiary hearing was violative of due process of law. This silence of Telenet demonstrates, far more pursuasively than anything WUI could now state, the correctness of WUI's request for an evidentiary hearing. There must be and should have been an evidentiary hearing in this matter.

8. In sum, the oppositions of Telenet and Graphnet advance positions which are contradicted by the relevant facts and legal authorities.

WHEREFORE, in view of all of the foregoing, and for the reasons set forth in WUI's Petition for Waiver of Rules, and Comments herein, WUI respectfully requests the Commission to (a) grant WUI a waiver of its Rules as previously requested, and (b) set aside the grants of authorization to Graphnet and Telenet pending the holding of an evidentiary hearing this proceeding.

Respectfully submitted,

WESTERN UNION INTERNATIONAL, INC.

By: Marc N. Epstein
Its Attorney

One WUI Plaza
New York, New York 10004

Dated: April 13, 1977

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In re Applications of

GRAPHNET SYSTEMS, INCORPORATED For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.	File Nos. I-P-C-11 I-P-C-11A
TELENET COMMUNICATIONS CORPORATION For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	File No. I-T-C-2634
RCA GLOBAL COMMUNICATIONS, INC. For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	File No. I-T-C-2657
WESTERN UNION INTERNATIONAL, INC. For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	File No. I-T-C-2658

To the Commission:

OPPOSITION TO MOTIONS TO STRIKE

TRT Telecommunications Corporation (TRT) hereby submits its opposition to the motions filed by Telenet Communications Corporation (Telenet) on April 1, 1977, and by Graphnet Systems, Inc.

(Graphnet)*/ on April 8, 1977, requesting that the Comments on Petition for Partial Reconsideration filed in this proceeding by TRT on March 14, 1977 be stricken. In support hereof, TRT respectfully states as follows:

On February 10, 1977, a "Petition For Partial Reconsideration" was filed herein by RCA Global Communications, Inc. (RCA). Although we were in general agreement with the position taken by RCA in its petition, we were concerned, in light of certain ambiguities in the phrasing of RCA's arguments, that the basic unresolved policy issues which we believe have been presented by the Telenet and Graphnet applications may not have been adequately defined for the Commission's consideration in RCA's petition.

Specifically, we disagreed with RCA to the extent that it may have implied in its petition that upon reconsideration the Commission was required to conduct an inquiry into the need and feasibility, in general, of additional competition in the provision of international record/data communications services. Rather, we believe that the fundamental defect in the Commission's authorizations of Telenet and Graphnet is that, with only passing reference to the existing industry structure or its own policies implemented over the past thirty-four years governing the provision of record communications services, the Commission would place Telenet and Graphnet in unique preferential positions of being able to offer integrated international/domestic record services. The Commission thus would place Telenet and Graphnet in a preferential position vis-a-vis the IRCs which would continue to be limited to the gateway cities. Telenet and Graphnet would also be accorded a preference over other domestic carriers who would continue to be able to provide international services only through interconnection with other carriers. The Commission did not give any meaningful consideration to the complex problem of whether a fair competitive environment could be maintained in either the international or the domestic data markets with the imposition of the proposed unified domestic/international services of Telenet and Graphnet upon the existing industry structure. Moreover, the Commission did not give any consideration at all to the even more complex and far-reaching issues relating to how the industry would have to be restructured to accommodate the proposed Telenet and Graphnet services and, more importantly, whether such a restructuring would be in the public interest.*/

---

*/ Graphnet combined its motion with respect to TRT's pleading with an opposition directed against pleadings filed herein by Western Union International, Inc. TRT in this opposition will only respond to Graphnet's arguments insofar as they relate to TRT's pleading.

---

*/ Interestingly, even Telenet in its recent testimony before the Subcommittee on Communications of the House Committee on Interstate and Foreign Commerce recognized that these basic issues, which were raised by its application, have yet to be resolved. In this regard, in response to a question as to whether Telenet would not enjoy a competitive advantage over the IRCs, Telenet's President testified:

> "The question of whether it is entirely competitively fair or might discriminate against the international telegraph carriers who are restricted by Section 222 from operating in both sectors of the marketplace, is a real one which has to be coped with by Congress in that respect. My belief is that the marketplace should be relatively open to competition across the board, but only after you take care of the other problem [of somehow assuring that entry of additional carriers into the international market would not be restricted becasue of the desire of foreign administrations to deal with only a limited number of correspondents to any country]." Hearings on International Communications Services, March 16, 1977, TR 2-122,2-123.

Accordingly, TRT on March 14, 1977, within the time provided for by the Commission's Rules, submitted Comments in which it set forth its views with respect to the matters raised in RCA's Petition For Partial Consideration. We trust that the Commission may have found our comments helpful in resolving this matter. In any event, we submit that as a party in interest, TRT had a right at least to set forth its position on RCA's petition for the record.

In support of their motions, Telenet and Graphnet advance a novel interpretation of Section 405 of the Communications Act and Section 1.106 of the Commission's Rules and Regulations. According to Telenet and Graphnet, the only parties which have a right to be heard on petitions for reconsideration are those which oppose the grant of the relief requested. The adoption of this interpretation would operate most harshly upon TRT in this case. Thus, under the Telenet/Graphnet interpretation, TRT would be denied any opportunity to have its views considered as to the proper focus of the further inquiry and hearings requested by RCA. Moreover, comments in support or partial support of petitions for reconsideration previously filed by other parties are frequently filed in Commission practice. See, for example, Memorandum Opinion and Order, released January 12, 1977 in Docket No. 20097, FCC 77-34 and Memorandum Opinion and Order, released September 18, 1975, in Docket No. 19660, FCC 75-1023. We are not aware of any instances where such supporting comments have been stricken by the Commission. Certainly, Telenet and Graphnet in the instant motions have pointed to no precedent for this.

Finally, we note that Graphnet requests 10 days in which to respond to TRT's arguments as well as those of WUI's in the event the Commission denies its Motion To Strike. We are somewhat puzzled by this request in view of the circumstances that TRT did not set forth a separate basis for reconsideration that was not contained in RCA's petition and that Graphnet, at pages 7-9 of its pleading, purports to respond substantively to the arguments of TRT and WUI. However, TRT would not object to the filing of a further pleading by Graphnet, if the Commission believes this could be helpful.

WHEREFORE, TRT requests that the Commission deny the Telenet and Graphnet Motions To Strike.

Respectfully submitted,

TRT TELECOMMUNICATIONS CORPORATION

By: Roderick A Mette
Roderick A. Mette
Vice President and Counsel

1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dated: April 14, 1977

CERTIFICATE OF SERVICE

I, Vicki E. Barth, hereby certify that a copy of the foregoing has been sent by United States Mail, postage prepaid: this 14th day of April, 1977, to the following:

Telenet Communications Corporation
1666 K Street, N.W.
Washington, D.C. 20006
ATTN: Lawrence G. Roberts, Pres.

Joseph J. Jacobs, Esquire
ITT World Communications Inc.
67 Broad Street
New York, New York 10004

RCA Global Communications, Inc.
60 Broad Street
New York, New York 10004
ATTN: F.J. DeRosa, Esquire

Marc N. Epstein, Esquire
Western Union International, Inc.
One WUI Plaza
New York, New York 10004

Graphnet Systems, Inc.
ATTN: Edward P. Taptich, Esquire
McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Vicki E. Barth

Vicki E. Barth

Dated: April 14, 1977

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In re Applications of

GRAPHNET SYSTEMS, INCORPORATED For authority to permit use of facsimile services to communicate with terminal devices located in Belgium, Denmark, France, Italy, The Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and West Germany.	File Nos. I-P-C-11 I-P-C-11A
TELENET COMMUNICATIONS CORPORATION For authority to extend packet-switched data communications service from the continental United States to the United Kingdom and points beyond.	File No. I-T-C-2634
RCA GLOBAL COMMUNICATIONS, INC. For such modification of its existing authorizations as may be necessary to use its previously authorized facilities for the provision of an enhanced class of overseas datel service (Datel II).	File No. I-T-C-2657
WESTERN UNION INTERNATIONAL, INC. For modification of its existing authorizations to use its previously authorized facilities for the provision of Database service.	File No. I-T-C-2658

To: The Commission

REPLY TO OPPOSITION

Graphnet Systems, Inc. (hereinafter "Graphnet"), by its attorneys, submits herewith its reply to the "Opposition to Motions to Strike" filed herein by TRT Telecommunications Corporation (hereinafter "TRT") on April 14, 1977. For the reasons set forth below, Graphnet renews its request that the Commission strike the TRT "Comments on Petition for Partial Reconsideration" as an untimely petition for rehearing.

1. By Memorandum Opinion, Order, Authorization and Certificate released January 11, 1977, the Commission granted the captioned Graphnet application. Graphnet Systems, Inc., ___ F.C.C.2d ___ (FCC 77-2) (hereinafter cited "Decision"). Among other things, the Commission there ruled that the extension of Graphnet's services would serve the public interest, and that the arguments against Graphnet's application were unpersuasive.[1]

2. RCA Global Communications, Inc. (hereinafter "RCA") filed a timely petition for reconsideration of the Commission's Decision, objecting to a grant of Graphnet's application before further exploration of certain policy questions which RCA felt were incorrectly determined in the Decision.[2] Thereafter, both TRT and Western Union International, Inc. (hereinafter "WUI") concluded that additional reasons for overturning the Commission's Decision should be presented. TRT sought to accomplish that goal by filing "Comments" on the day appointed for oppositions to the

---

[1] TRT and other international carriers had opposed Graphnet's application, primarily on the ground that it did not include interconnection agreements with foreign telecommunications administrations.

[2] "Petition for Partial Reconsideration," filed February 11, 1977. Graphnet responded in full to RCA's arguments on March 14, 1977.

RCA reconsideration petition.[3] While WUI likewise filed "Comments" on March 24, 1977, it more candidly accompanied that pleading with a "Petition For Waiver of Rules," recognizing the inconsistency of its filing with Section 1.106 of the Commission's Rules.

3. By pleading filed April 8, 1977, Graphnet urged that the Commission summarily reject the TRT and WUI filings, inasmuch as they urged reconsideration of the Decision on grounds separate from RCA's.[4] Such untimely petitions for rehearing were barred by Section 405 of the Communications Act, Graphnet demonstrated, notwithstanding the titles given the pleadings.[5] In a Memorandum Opinion and Order released April 20, 1977 (Mimeo No. 80928), the Chief of the Common Carrier Bureau denied WUI's request for waiver of Section 1.106 of the Rules, thereby refusing WUI the opportunity to present its late plea for reconsideration. The question which remains here is whether there is any sound basis for a different treatment of TRT's filing. Graphnet submits there is none.

---

[3] TRT's "Comments" raised the issue of a domestic carrier extending its service to international points, a matter the RCA Petition "may not have . . . adequately defined." See TRT's "Opposition to Motion to Strike" (hereinafter "Opposition"), at 2.

[4] "Opposition and Motion to Strike of Graphnet Systems, Inc." (hereinafter "Motion to Strike").

[5] Motion to Strike at 4-7. See also E.D. Rivers, 6 R.R. 765 (1950) Great Lakes Television, Inc., 11 R.R. 346 (1954).

4. As noted above, Graphnet moved to strike the TRT pleading since, regardless of its title, the pleading in fact sought reconsideration of Graphnet's authorization on grounds distinct from those timely advanced by RCA. In its Opposition here, TRT edges closer to admitting that its "Comments" were an additional and untimely petition for rehearing. TRT states that it "disagreed with RCA" as to the "fundamental defect in the Commission's authorization" of Graphnet. Opposition at 2-3. And conceding that its "Comments" present an argument for reconsideration separate from RCA's, TRT claims nonetheless that it "had a right at least to set forth its position" once the matter of reconsideration was raised by RCA. Id. at 4.

5. TRT's right to set forth its position in that regard, however, is clearly defined in Section 405 of the Communications act and Section 1.106 of the Commission's Rules. In cases of adjudication, as with Graphnet's application here, interested parties have the right to file, within 30 days, petitions for rehearing raising "findings of fact and/or conclusion of law" which petitioner believes to have been erroneously decided. Section 1.106(d)(1). No other procedural avenue for rehearing at the Commission is available to a party opposing an adjudicatory decision.[6] Having gambled that RCA's timely petition would cover the matters it felt should be raised, TRT has no choice but to

---

[6] In this regard, the precedents cited by TRT as accepting comments on petitions for reconsideration involve rulemaking proceedings, where the Commission's Rules contemplate a broad participation by the public.

rest its hopes on favorable action by the Commission on the RCA petition.[7]

6. In summary, Graphnet submits that a due regard for the Commission's procedural processes, as well as for the mandate of Section 405 of the Act, requires a striking of the TRT "Comments." To the extent the views expressed in TRT's "Comments" -- ones which can hardly be characterized an "opposition" to RCA -- track the position set forth in RCA's reconsideration request, they are simply cumulative. To the extent they are different, they represent an untimely petition for reconsideration. Having properly rejected WUI's earlier attempt to evade the Rules applicable to requests for reconsideration, the Commission should not here sanction the same approach by TRT.

Respectfully submitted,

GRAPHNET SYSTEMS, INC.

Edward P. Taptich

Virginia S. Carson

McKenna, Wilkinson & Kittner
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

April 27, 1977

---

[7] As to TRT's claim that its "Comments" address the scope of the proceeding to be ordered if RCA's petition is successful, this coloration of the "Comments" is at odds with their thrust urging reversal of the *Decision* on a ground independent of RCA's arguments.

TRT [illegible] CORPORATION

RODERICK A. METTE
VICE PRESIDENT & COUNSEL

June 28, 1976

Mr. Vincent J. Mullins
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: Application of Telenet Communications Corporation for authority to provide Packet-Switched Data Communications Service between the United States and the United Kingdom (File No. I-T-C-2634)

Dear Mr. Mullins:

TRT Telecommunications Corporation (TRT) is an international record carrier authorized by the Commission to provice record and data communications services between the United States and the United Kingdom (UK). It is therefore a party in interest with respect to Telenet's application.

However, as set forth in the pleadings previously filed with respect to Telenet's application by ITT World Communications Inc. and Western Union International, Inc., it now appears that Telenet and its proposed UK correspondent have not yet entered into an agreement to provide the joint service contemplated in Telenet's application. In this regard, these carriers request the Commission to reject Telenet's application. Telenet, on the other hand, in its Opposition filed on June 15, 1976, requests the Commission to process its application, notwithstanding a lack of any "formal agreement" between it and its proposed correspondent.

TRT does not believe that it should be required at this time to take a position on the basis of a hypothetical service formulated by Telenet without the concurrence of its proposed UK correspondent. Accordingly, TRT requests that it be granted a reasonable opportunity to submit its substantive comments after the question of Telenet's operating arrangements with its UK correspondent has been clarified.

Respectfully submitted,

Roderick A. Mette

Roderick A. Mette
Vice President & Counsel

cc: W. R. Hinchman (FCC)
C. R. Cowan (FCC)
J. Warwick (FCC)
P. M. Walker (Telenet)
J. J. Jacobs, Esq. (ITT)
D. J. Elardo, Esq. (RCA)
F. J. DeRosa, Esq. (RCA)
R. Michelson, Esq. (WUI)

EXECUTIVE OFFICES: 1747 PENNSYLVANIA AVE. N.W., WASHINGTON, D.C. 20006/TELEX 8-9439/TELEPHONE (202) 785-5635

EXHIBIT B

The Gillette Company
Prudential Tower Building
Boston, Massachusetts 02199
(617) 421-7000

July 28, 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: Application of Telenet Communications Corporation for Authority to extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and points beyond

File: ITC-2634

Dear Mr. Hinchman:

We understand that the Telenet Communications Corporation has submitted an application to the Federal Communications Commission to extend their domestic packet-switching service to the United Kingdom.

The Gillette Company is a multinational corporation with plant and headquarters personnel locations in London, and we endorse the Telenet application. If Telenet can provide such an economic means for the transmission of digital data, our corporate time sharing capabilities in Boston can be extended to our London users. The proposed extension of the packet-switching function beyond London should provide even greater advantages to Gillette in facilitating financial reporting from our many locations in Continental Europe.

Telenet's domestic packet-switching service has provided us excellent assistance. Such performance on an international basis at reasonable costs certainly should prove beneficial to Gillette and to other multinational companies.

Sincerely,

Frank R. Sullivan

Frank R. Sullivan
Assistant Director, MIS
International Division

cc: ✓ Philip M. Walker
Vice President and General Counsel
Telenet Communications Corporation
1050 Seventeenth Street, N.W., Suite 850
Washington, D.C. 20036

FRS:gtc

CallData

CallData Systems, Inc
20 Crossways Park
Woodbury, New York
(516) 575-3282

20 August 1976
960-76-132

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D. C.   20554

Re: Application of Telenet Communications Corporation for Authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom and Points Beyond

File No.: ITC-2634

Dear Mr. Hinchman:

Our organization is in basic agreement with the need for the proposed expansion of the Telenet service beyond its current limits.

The Telenet service has provided our organization with a cost-effective means to expand our computer communications environment in a manner not before possible.

International expansion of the Telenet service would be of immense value in the cost-conscious, expanding data processing community.

If further supportive comments are in order, or if you require additional information on CallData's use of the Telenet service, I would be pleased to accommodate.

Sincerely,

Kurt A. Thoss, CDP
Director of Marketing

KAT/emk

cc: Mr. Philip Walker
V.P. & General Counsel
Telenet Communications Corp.
1050 17th Street, N.W.
Washington, D. C.   20036

A subsidiary of Grumman Data Systems Corporation, Bethpage, NY

American Express Company
American Express Plaza
New York, New York 10004

September 9, 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: Application of Telenet Communications Corporation for Authority to extend Packet - Switched Data Communications Service from the Continental United States to the Unted Kingdom and Points Beyond

File Number: ITC-2634

Dear Mr. Hichman:

The American Express Company currently uses the timesharing computer services offered by a vendor who subscribes to the Telenet Network. We have been most fortunate to have been able to use this vendor's services via the Telenet Network in the Continental United States.

Because of our significant business interests overseas, including the United Kingdom and Europe, we believe that the international packet switching network connection proposed by Telenet could be of substantial benefit to American Express. This would enable timesharing users in Europe to utilize the same computers as those in the United States at costs far less than conventional communications now permit.

Accordingly, we would appreciate early favorable action on this application from Telenet.

Very truly yours,

S.J. Moss
Vice-President -
Systems & Communications

SJM/cs

cc: Philip Walker /
Vice President and General Counsel
Telenet Communications Corporation
Washington, D.C. 20036

THE
INFORMATION
BANK®

Mt. Pleasant Office Park
1719A Route 10
Parsippany, New Jersey 07054

Telephone (201) 539-5850

November 23, 1976

Mr. Walter Hinchman
Chief, Common Carrier Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: Application of Telenet Communications Corporation for authority to Extend Packet-Switched Data Communications Service from the Continental United States to the United Kingdom, Europe, and Japan.

Dear Mr. Hinchman:

The Information Bank presently subscribes to Telenet's domestic packet-switched service. The Information Bank also has significant interest in extending its market place beyond the continental United States, which can be effectively accomplished only through employing convenient, reliable, and cost-effective data communications services.

Based upon our domestic experience with Telenet, we believe that the international packet-switching network proposed by Telenet would be of substantial benefit to the development of our international market. It is our opinion that the costs of conventional international communications make the development of U.K., European, and Far East markets for The Information Bank impractical.

Accordingly, we hereby express our support for Telenet's international packet-switching application.

Sincerely,

Gordon H Runner
Gordon H. Runner
Vice President

GHR:kw
cc: Mr. Roger W. Goetz
    Mr. Stuart L. Mathison
    Mr. Takeshi Utsumi

NYT A Subsidiary of The New York Times Company

CERTIFICATE OF SERVICE

1. I am an attorney associated with the firm of LeBoeuf, Lamb, Leiby & MacRae, attorneys for petitioner, ITT World Communications Inc.

2. I hereby certify that the attached Joint Appendix has been served on the attorneys of record for all parties to this proceeding in the following manner.

3. At my direction, copies of the Joint Appendix were delivered earlier this week by hand to counsel for other petitioners and for the intervenors supporting ITT Worldcom. The parties so served and the dates of service are listed below:

John Shutkin, Esq.
Cahill Gordon & Reindel
Attorneys for Petitioner
RCA Global Communications, Inc.
80 Pine Street
New York, New York
May 22, 1978

E. Edward Bruce, Esq.
Covington & Burling
Attorneys for Intervenor
TRT Telecommunications, Inc.
888 Sixteenth Street, N.E.
Washington, D.C.
May 23, 1978

Alan Kolod, Esq.
Stroock, Stroock & Lavan
Attorneys for Intervenor
Western Union International, Inc.
61 Broadway
New York, New York
May 25, 1978

Barry B. Grossman, Esq.
Attorney for Respondent United States
Department of Justice
Washington, D.C. 20530

Joseph M. Kittner, Esq.
McKenna, Wilkinson & Kittner
Attorneys for Intervenor
  Graphnet Systems, Inc.
1150 17th Street, N.W.
Washington, D.C. 20036

Donald E. Ward, Esq.
Attorney for Intervenor
Telenet Communications Corp.
1730 Rhode Island Avenue, N.W.
Washington, D.C. 20036

E. Edward Bruce, Esq.
Covington & Burling
888 Sixteenth Street, N.E.
Washington, D.C.

John S Kinzey
John S. Kinzey

New York, New York
May 26, 1978